

TITLE 16 – COUNCIL PUBLIC HEARING 02/22/10 – w/SHORELAND – PART 1

NOTE: INTERNAL CHAPTER, ARTICLE, AND SECTION REFERENCES HAVE NOT BEEN REVISED

Title 16_____

LAND USE AND DEVELOPMENT CODE*

Chapters:

~~16.04 General~~

~~16.08 Definitions~~

~~16.12 Zoning Regulations~~

~~16.16 Administration and Enforcement~~

~~16.20 Building/Regulated Activity Permits~~

~~16.24 Appeals, Special Exceptions and Variances~~

~~16.28 General Development Requirements~~

~~16.30 Master Site Development Plan~~

~~16.32 Design and Performance Standards~~

~~16.36 Development Application and Review~~

~~16.37 Marine Related Development Application and Review~~

~~* _____ Prior ordinance history: Ords. 7-90, 12-91, 9-92, 2-93 and 3-93.~~

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Chapter 16.041

GENERAL

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~~16.04.020 Authority.~~

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16.04.0101.1 Purpose.

This title is designed for all the purposes of zoning embraced in Maine Revised Statutes, and has been created as an integral part of a comprehensive planning and implementation process for the town to promote the health, safety and general welfare of its residents.

Among other things, zoning is designed to:

1. encourage the most appropriate use of land and water throughout the town;
2. promote traffic safety;
3. provide safety from fire and other elements;
4. provide adequate light and air;
5. prevent overcrowding of real property;
6. prevent housing development in unsuitable areas;
7. provide an adequate street system;
8. control and manage the coordinated development of un-built areas;
9. encourage the formation of community units;
10. provide an allotment of land area in new developments sufficient for all the requirements of community life;
11. conserve energy and natural resources and protect the environment;
12. preserve land values; and,
13. provide for adequate public services. (~~Land use and dev. code § 1.1, 1994~~)

16.04.0201.2 Authority.

A. Title. This title is known, and may be cited as, the “Land Use and Development Code of the Town of Kittery, Maine.”

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B. Application of Title. The provisions of this title pertain to all the land and water areas as herein defined within the boundaries of the town. (~~Land use and dev. code § 1.2, 1994~~)

~~16.04.030~~1.3 Responsibility.

The Planning Board administers this title and delegates duties as prescribed herein. (~~Land use and dev. code § 1.3, 1994~~)

~~16.04.040~~1.4 Planning board.

A. Appointment and composition.

1. The planning board is established by the Town Charter, Article VIII, Section 8.01, Planning, and applicable state statutes.

2. The board consists of seven (7) members, who are Kittery residents serving staggered terms of office of three years.

3. Members of the board are appointed by the town council.

4. A municipal officer, or spouse thereof, may not serve as a member of the board.

5. Members serve until their successors are appointed and qualified.

6. The number of consecutive terms by any board member is limited by Section 8.01(3) of the Town Charter.

7. A member of the board may be dismissed for cause by the town council before the expiration of such member's term after notice and hearing.

8. Vacancies are filled by town council appointment for the unexpired term.

B. Powers and Duties.

Powers and duties of the planning board are:

1. The board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all board meetings of the Board, and show the vote of each member upon each question.

2. A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.

3. Adopt bylaws to govern routine board proceedings.

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4. Set agendas and hold meetings to perform duties.

5. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.

6. All records of the Board are public records, except as excluded under 1 M.R.S. §402 (3)(A)-(O), the Maine Freedom of Access (Right to Know) statute.

7. The board is to:

a. Perform duties as provided by law.

b. Hear and decide on required development plans including special exception use requests that require Planning Board review using the Development Application and Review procedures and criteria and other provisions in this Code.

c. Prepare and recommend for Council adoption a Comprehensive Plan and initiate Plan implementation by zoning ordinance, other land use and development regulations, and other means; and monitor and report on Plan implementation progress.

16.04.0501.5 Board of aAppeals.

A. Appointment and composition.

1. The Board of Appeals is established by the Town Charter, Article VIII, Section 8.04, and 30-A M.R.S. §2691.

2. The board consists of seven (7) members, who are Kittery residents serving staggered terms of office of three years.

3. Members of the board are appointed by the town council.

4. A municipal officer, or spouse thereof, may not serve as a member of the board.

5. Members serve until their successors are appointed and qualified.

6. The number of consecutive terms by any board member is limited by Section 8.01(3) of the Town Charter.

7. A member of the board may be dismissed for cause by the town council before the expiration of such member's term after notice and hearing.

8. Vacancies are filled by town council appointment for the unexpired term.

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B. Powers and Duties.

Powers and duties of the board of appeals are:

1. To elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the board, and show the vote of each member upon each question.

2. A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.

3. Adopt bylaws to govern routine board proceedings and set agendas and hold meetings to perform duties.

4. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.

6. All records of the Board are public records, except as excluded under 1 M.R.S. §402 (3)(A)-(O), the Maine Freedom of Access (Right to Know) statute.

7. The board is to:

a. Perform duties as provided by law.

b. Administrative Decision Appeal: Hear and decide on an administrative decision appeal where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer in review of an action on a permit application under this Code.

c. Variance Request: Hear and decide on a variance request within the limitations set forth in this Code and 30-A M.R.S. §4353(4).

d. Miscellaneous Variation Request: To hear and decide on a miscellaneous variation request to permit variation in:

i. nonconformance as prescribed in Article III of Chapter 16.28, Nonconformance;

ii. standards contained in Article XI of Chapter 16.32, Parking, Loading and Traffic or Section 16.32.630 Sign Violation and Appeal; or

iii. non-subdivision right-of-way widths.

e. Special Exception Use Request: Hear and decide on a special exception use request not requiring Planning Board review per development and site review thresholds and using the

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Development Application and Review (Chapter 16.36) procedures and review criteria and other provisions in this code.

~~16-04-1.0606~~ 1.0706 Port authority.

A. Establishment. The Kittery port authority, hereinafter also known as KPA, was established by the 100th Legislature of the State of Maine, HP 682, Document 960, as amended.

B. Appointment and Composition. As provided in the legislative document.

C. Powers and Duties. As provided in the legislature document.

D. Water Area Development Powers and Duties.

1. The KPA ~~shall~~ is to provide advice to the planning board on development applications dealing with piers, docks, wharfs, marinas and other uses projecting into water bodies.

2. Where KPA review is required, such review must be completed prior to planning board review.

3. Upon amendment, change, or revision of the existing comprehensive plan, or adoption of a new comprehensive plan, this code must be reviewed for amendment to further define the KPA's role under this title.

4. Where town council action is required under the Wharves and Weirs statute, the council may appoint the KPA as its designee for on-site inspection and to issue a written report on the same to the town council.

5. KPA approval authority under this code applies to structures extending into a water body beyond the mean high water line or the upland edge of a coastal wetland and extends from the water body to the mean high water line or upland edge of a coastal wetland. The interface between review and approval responsibilities of the KPA and the Kittery planning board is defined in Note 6 to Table 16.32.8.490. (~~Ord. 14-06 (part): land use and dev. code § 1.6, 1994~~)

~~16-04-1.0707~~ 1.0707 Conflicting requirements.

A. Conflict Within This Title. Where the requirements of this title are in conflict with each other, the most restrictive, or that imposing the higher standards ~~shall governs~~ shall govern.

B. Conflict With Other Statutes. Wherever the requirements of this title are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive, or that imposing the higher standards ~~shall governs~~ shall govern. (~~Land use and dev. code § 1.7, 1994~~)

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16-04-.~~1.0808~~ 1.0808 Separability.

In the event that any section, subsection or any portion of this title ~~shall be~~ is declared by any court of competent jurisdiction to be invalid for any reason, such decision ~~shall does~~ not be deemed to affect the validity of any other section, subsection or other portion of this title; to this end, the provisions of this title are declared to be severable. (~~Land use and dev. code § §1.8, 1994~~)

16-04-.~~1.0909~~ 1.0909 Amendments.

No amendments to this title ~~shall may~~ be adopted until after the planning board and the town council ~~of the town shall~~ have held a public hearing thereon. Public notice of the hearing ~~shall~~ must be published in a newspaper of general circulation in the town at least seven days prior to the public hearing. Said amendments are effective as provided by the Town Charter. (~~Land use and dev. code § §1.9, 1994~~)

Chapter 16.~~082~~ 082

DEFINITIONS

Sections:

~~16-08-.2.010 Purpose.~~

~~16-08-.2.020 Definitions.~~

16-08-.~~2.0101~~ 2.0101 Purpose.

Except where specifically defined in this chapter, all words used in this title carry their customary dictionary meanings. Words used in the present tense include the future and the plural includes the singular; the word “lot” includes the word “plot”; the word “building” includes the word “structure”; the words “shall” or “must” are always mandatory; “occupied” or “used” are considered as though followed by the words “or intended, arranged or designed to be used or occupied”; and, gender-specific words (e.g., she, he, his, hers) include the opposite sex equivalent. (~~Ord. 14-06 (part); land use and dev. code § §2.1, 1994~~)

16-08-.~~2.0202~~ 2.0202 Definitions.

As used in this title:

Abuts means that which is contiguous to or shares a common boundary line.

Abutter means the owner of ~~an abutting property~~ a property that is contiguous to or shares a common boundary line.

Abutting property as used herein, relates solely to the notification of ~~these~~ those property owners who ~~must be notified in writing when new development or re-development is proposed means any property which is within one hundred fifty (150) feet of a property or site in question their property boundary(ies).~~ must be notified in writing when new development or re-development is proposed means any property which is within one hundred fifty (150) feet of a property or site in question their property boundary(ies). This ~~shall~~ notification must include inter tidal land below the normal high-water mark, but not that land beyond one hundred (100) rods (one thousand six hundred fifty (1,650)

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feet) distant from the normal high water mark, or that land below the normal low water mark.

Where question exists regarding ownership of intertidal lands, consult Figure 1 for Chapter 16.08, entitled, “Formula for Determining Ownership of Intertidal Land as a Guide for Identifying Abutters,” ~~set out~~ at the end of this chapter.

Accessory building means a subordinate building on the lot, the use of which is incidental to that of the main or principal building.

Accessory Dwelling Unit (ADU) means an apartment which is part of an existing structure on the property where the owner of the property occupies one of the units. The accessory dwelling unit may be rented so that the owner-occupant may benefit from the additional income. The owner may also elect to occupy the accessory dwelling unit and rent the principal dwelling unit.

Accessory structure means a structure that is subordinate to and serves a principal building or use on the lot.

Accessory use means a use customarily incidental and subordinate to the principal use and located on the same lot with such principal use.

Adult entertainment establishment means any business in any use category, a substantial or significant portion of which consists of selling, renting, leasing, exhibiting, displaying, or otherwise dealing in materials, actions, and/or devices of any kind which appeal to prurient interest and which depict or describe specified sexual activities including but not limited to:

1. Live entertainment, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities,” or

2. Instruments, devices, or paraphernalia, which are designed for use in connection with “specified sexual activities.”

For the purpose of this definition “specified sexual activities” means:

a. Human genitals in a state of sexual stimulation or arousal;

b. Acts of human masturbation, sexual intercourse or sodomy, fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

Aggrieved party means an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this title; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Agriculture means the production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and greenhouse products. Agriculture does not include forest management and timber harvesting activities.

Alternative tower structure means, but is not limited to clock towers, bell steeples, utility/light poles, water towers, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers, referred to by the industry as “stealth” technology.

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Antenna means any apparatus designed for telephonic, radio, television, or similar communications through the sending and/or receiving of electromagnetic waves.

Apartment means a room or set of rooms for rent, fitted especially with housekeeping facilities and used as a single dwelling unit.

Apartment building means a building arranged, intended or designed to be occupied by three or more families each living in its own separate dwelling unit.

Aquaculture means the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Art studio/gallery means enclosed place for the exhibition, production and sales of art.

Banner means any sign of lightweight fabric or similar material that is mounted for display at one or more edges.

Basal area means the area of cross-section of a tree stem derived by measuring the diameter of a standing tree measured 4.5 feet from ground level and inclusive of bark.

Basement means an area below the first floor having ~~part but not more than one-half of its height above grade and used for storage or garage space for use of occupants of the building. A basement shall not be used as a sole living quarters within a dwelling, a floor-to-ceiling height of 6 feet or more and 50% of its volume below the existing ground. Basements will not be permitted for use as a sole living quarters within a dwelling, but may be used as living area, storage or garage space.~~

Bed and breakfast means a home occupation in a single-family dwelling in which lodging or lodgings with meals served before noon are offered to the general public for compensation, offering no more than six bedrooms for lodging purposes.

Best Management Practices (“BMP”). “Best Management Practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water bodies. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage

Billboard means the surface of any building or structure which is available for hire for advertising goods or services not provided on premises. Official business directional signs (OBDS) are not to be considered billboards.

Board means the planning board of the town of Kittery, Maine.

Board of Appeals means the Board of Appeals of the Town of Kittery and may be referred to as the BOA.

Boathouse means a building used exclusively for the keeping, repairing and maintenance of boats.

Boat launching facility means a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Boat yard means a business or gainful occupation where boats are hauled, stored, repaired and/or constructed.

Brook means a channel between defined banks including the floodway associated floodplain wetlands where the channel is created by the action of surface water and characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing water-borne deposits on exposed soil, parent material, or bedrock.

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Buffer means a combination of physical space and vertical elements, such as plants, berms, fences, or walls, the purpose of which is to separate and screen incompatible land uses from each other.

Buffer area means a neutral area separating conflicting areas.

Building means any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of persons, animals, or property. Each portion of a building, separated from other portions by a fire wall, is considered as a separate structure.

Building frontage means linear footage along the face of the building containing the main public entry, commonly labeled “front elevation” on building plans.

Building materials and garden supply means a retail establishment primarily engaged in selling lumber and other building materials; paint, glass, floor covering, and wallpaper; hardware, drapery and upholstery, flowers and/or nursery stock, lawn and garden supplies; modular homes and mobile homes.

Business means, for the purposes of the sign regulations, any corporation, trust, partnership, or other verifiable legal entity with the object of gain, benefit, or advantage.

Business and professional offices means a building, or portion thereof, in which there is located the offices of a profession or business including, but not limited to, banks, insurance offices, realtors, attorneys, appraisers, engineers, architects, landscape architects, accountants, dentists, optometrists, and physicians.

Business facility means, for the purposes of the sign regulations, a workplace of a business other than an employee’s or employer’s personal residence.

Business services means establishments primarily engaged in providing services to business enterprises on a fee or contract basis including, but not limited to, advertising, credit agencies, photocopying, commercial graphics, computer programming, cleaning and maintenance services, employment agencies, data processing, consulting and public relations, security and business equipment rental.

Campground means any area or tract of land use to accommodate two or more visitors, including tents, trailers, or other camping outfits, not to be used as permanent residence.

Canopy, tree (tree canopy) means the more or less continuous cover formed by tree crowns in a wooded area.

Certificate of occupancy means a permit issued by the code enforcement officer that authorizes the recipient to make use of property in accordance with the requirements of this title and applicable state and federal requirements.

Character means the main or essential nature especially as strongly marked and serving to distinguish.

Clear-cut means any timber harvesting on a forested site greater than one acre in size which over a ten (10) year period results in an average residual basal area of trees over six inches in diameter of less than thirty (30) square feet per acre, unless one or both of the following conditions exist:

1. If, after harvesting, the average residual basal area of trees over one inch in diameter measured at 4.5 feet above the ground is thirty (30) square feet per acre or more, a clear-cut does not occur until the average residual basal area of trees six inches or larger measured at 4.5 feet above the ground is less than ten (10) square feet per acre; or

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2. After harvesting, the site has a well-distributed stand of trees at least five feet in height that meets the regeneration standards applicable under 12 M.R.S., c. 805, § 8869, subsection 1.

Cluster residential development means a form of land use improvements and/or change in which the dimensional requirements are reduced below that normally required in the zoning district in which the land use improvements and/or change is located, in return for the provision to set aside a portion of the tract as of permanent open space and other environmental enhancements owned and maintained jointly in common by individual lot/unit owners, the town, or a land conservation organization.

Cluster mixed-use development means a form of land use improvements and/or change, with residential and commercial elements in mixed-use or single-use buildings, in which the dimensional requirements are reduced below that normally required in the applicable zoning district in return for a requirement providing traffic improvements, utility extensions, permanent open space, and other such improvements that the planning board may determine contribute to the enhancement of the project and/or the surrounding environment.

Coastal wetland means all tidal and subtidal lands; all lands below any identifiable debris line left by tidal action; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat, or other contiguous low land which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Code enforcement officer (CEO) means the person duly authorized by the town to carry out the duties as prescribed herein and in the town administrative code.

Co-location means the location of more than one telecommunications facility (use) on a tower or alternative tower structure.

Commercial fisheries/maritime activities (use) means the active use of lands, buildings, wharves, piers, floats, docks or landings with the principal intent of such activity being the production of income by an individual or legal business entity through the operation of a vessel(s). This activity may be either a principal or accessory use as herein defined. ~~in the Kittery land use and development code zoning ordinance.~~

Commercial greenhouse means a building or structure made primarily of transparent or translucent material used by a business or in the production of income that is designed and/or used for the indoor propagation and/or cultivation of plants.

Commercial/industrial and/or fisheries use structure means a structure which is used by a business entity, port authority, or municipality having frontage on navigable water and, as its principal use, provides for hire to the general public, offshore mooring and/or docking facilities for vessels used for any marine-related commercial, industrial, or fisheries use.

Commercial kennel means a commercial operation that: (1) provides food and shelter and care of eight or more animals for purposes not primarily related to medical care; or (2) has at any one time eight or more animals for the purpose of commercial breeding.

Commercial marina use structure means a structure which is used by a business entity to service serve the general public by providing marine-related services.

Commercial or home occupation vessel means the vessel is used for commercial or home occupation use when its principal purpose or use is in the pursuit of one's business or trade for the

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purpose of earning a livelihood. The burden of proof in establishing the commercial or home occupation use of a vessel lies with the vessel owner.

Commercial use means the use of lands, buildings, or structures, other than a “home occupation,” defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

Community means the town of Kittery and its people.

Comprehensive plan means any part or element of the plan or policy for the development of the town as defined in ~~MRSA, Title 30-A, M.R.S., §Section 4301~~, as issued in the Kittery comprehensive plan, dated July 1989 and approved by the town council on September 25, 1989, or subsequent revisions or additions thereto (e.g., comprehensive harbor plan).

Conference center means a facility used for conferences, seminars, and meetings, including accessory accommodations for food preparation and eating, recreation, entertainment, resource facilities, and meeting rooms.

Construction drawings means drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground fire alarm ducts, pavements, cross-section of streets, miscellaneous structures, etc.

Construction services means the performance of work and/or the furnishing of supplies to members of the building trades such as, but not limited to, plumbing, painting, building, well drilling, carpentry, masonry, or electrical installation, which requires, or customarily includes, the storage of materials and/or the location of commercial vehicles at the site.

Contiguous lots means lots which adjoin at any line or point, or are separated at any point by a body of water less than fifteen (15) feet wide.

Convalescent care facility means a facility that is licensed by the state of Maine to provide nursing care to persons during periods of recovery or rehabilitation. The facility provides nursing care and related rehabilitation services. The facility does not provide hospital services except as incidental to the delivery of nursing care. A convalescent care facility does not include any facility that is defined as an eldercare facility.

Convenience store, neighborhood grocery facilities means a retail store containing less than two thousand (2,000) square feet of gross floor area that is designed and stocked to sell primarily food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a grocery store). It is designed to attract and depends upon a large volume of stop-and-go traffic. Supplementing these uses with accessory gasoline sales requires additional parking and traffic considerations.

Corner Lot. In districts where yards are required:

1. Such corner lots, located at the intersection of two streets, ~~shall be~~are deemed to have a side rather than a front yard between the principal building and the side street. Such side yard ~~shall may~~ not be less than the front yard requirements of uses located on the side street.

2. Such corner lots, located at the intersection of two streets, ~~shall be~~are deemed to have a side rather than a rear yard between the principal building and the abutting property on the side street. Such side yard ~~shall may~~ not be less than the side yard requirements of uses located on the side street.

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3. All such side yards described above ~~shall~~must conform ~~with~~to the specific regulations related to yard space and related building height contained in the district provisions of this title.

Coverage (lot, building) means the aggregate or the maximum horizontal cross-section area of all buildings on the lot including accessory buildings but excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches. Pet shelters, playground equipment, tree houses, and structures that are not also “buildings” are not used in calculating building coverage. Additionally, this is not to be construed to mean the aggregate of floors in a multi-level building.

Coverage (lot, structure) means the aggregate or the maximum horizontal cross-section area of all structures and buildings on the lot including accessory structures and buildings but excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches. Pet shelters, playground equipment, and treehouses are not used in calculating structure coverage.

Cut-off fixture means a lighting fixture or luminaire that controls glare by directing light well below the horizontal. A cut-off fixture limits the direction of light so that a maximum of two and one-half percent of the total lamp lumens shine above ninety (90) degrees or a line parallel to the surface of the ground and a maximum of ten percent (10%) of the lamp lumens shine above eighty (80) degrees, including any above ninety (90) degrees, as shown in the following sketch.

Editor NOTE: Fixture Diagram inserted here.

Day means a calendar day unless otherwise indicated.

Day care facility means a house or other place conducted or maintained by anyone who provides on a regular basis and for consideration, care and protection for three or more unrelated children under sixteen (16) years of age, who are unattended by their parent(s) or guardian(s), for any part of a day. There ~~shall~~must be a minimum of fifty (50) square feet of fenced outside play area for each child enrolled. Any facility, the chief purpose of which is to provide education, ~~shall is not be~~ considered a day care facility.

Deck means an unenclosed, unroofed exterior platform structure, with or without railings, which is elevated above ground, and is typically of wood construction, whether attached to a building or freestanding. A deck is not a water-dependent structure.

Designated historic building means a building listed on or located within an historic district listed on the National Register of Historic Places or a list of historic buildings or local historic districts published by the Maine Historic Preservation Office, or contained in the town’s adopted comprehensive plan.

Developer means any person, firm, corporation, or other legal entity that makes application for any type of development within the town ~~of Kittery~~.

Development means a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

Development master plan means a conceptual, integrated design and infrastructure plan for the development of a master planned property in which: (1) the development standards are applied to the land as defined by its perimeter, rather than by the individual lots, tracts and parcels into which the land may be divided, and (2) the ~~zoning~~ standards are applied to the zoning district rather than to individual lots, tracts and parcels within the ~~zoning~~ district.

Dimensional requirements means numerical standards relating to spatial relationships including, but not limited to, ~~to setbacks~~ setback, lot width and area, shore frontage, percent of lot coverage, and height.

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Disturbed Area is land altered by the clearing of vegetation, grading, excavation and redevelopment. The cutting of trees without grubbing, stump removal, and the disturbance or exposure of soil, is not considered to be disturbed area. Work performed in order to continue the original line and grade, hydraulic capacity, and the original purpose of the land or the improvements thereon is not considered to be disturbed area.

Dock means the slip or waterway extending between two piers or projecting wharves or cut into the land for the reception of vessels.

Drainage Ditch.

1. “Drainage ditch” means a man-made, regularly maintained channel, trench, or swale for conducting water that has a direction of flow to remove surface water or groundwater from land by means of gravity.

2. For the purposes of this title, any new activity that reroutes a stream bed or dredges a wetland ~~shall is not be~~ considered to be a “drainage ditch.” Where a drainage ditch widens out into a larger wetland, a route no more than twelve (12) feet in width can be considered to be the drainage ditch. The remainder ~~shall be~~ is considered wetlands unless it is demonstrated that the originally developed drainage ditch was designed to be greater than twelve (12) feet in width.

Dredge means to move or remove, by digging, scraping, scooping, or suctioning any earth, sand, silt, mud, gravel, rock, or other material from the bottom of a water body or wetland surface.

Driveway means a vehicular access way less than five hundred (500) feet in length serving two lots or less.

Dwelling means a building designed or used as the living quarters for one or more families. The term does not include motel, rooming house, hotel, inn, club, trailer, or structures solely used for transient or overnight occupancy.

Dwelling unit means a room or group of rooms forming a habitable unit for one family with facilities used or intended to be used for living, sleeping, cooking, eating, and sanitary facilities. It comprises at least six hundred fifty (650) square feet of habitable floor space, except for elderly housing, an accessory dwelling unit, or a temporary, intra-family dwelling unit. The term does not include a trailer.

Easement means the authorization of a property owner for the use by another, and for a specified purpose, of any designated part of his/her property.

Eave means the projecting lower edges of a roof overhanging the wall of the building.

Eldercare facility means a residential facility occupied principally by elderly residents who are at least fifty-five (55) years of age (or in the case of a couple, at least one of whom is at least fifty-five (55) years of age) that provides a program of services to its residents. Occupants of the facility may also include handicapped individuals of any age. The facility includes shared community space and shared dining and kitchen facilities that are used on a daily basis by at least some of the residents of the facility. The housing accommodations in the facility can be either dwelling units or residential care units or a combination of the two. The facility may include facilities for allied health services, social services, and personal services such as physical and occupational therapy, a beauty shop, recreational programs, elderly day care, and similar programs. The use of these facilities must be accessory to the primary residential use of the facility but may be open to nonresidents of the facility. The service component can vary to meet the needs of the residents but must include at least one meal a day for some of the residents of the facility. The definition of eldercare facility includes a variety of elderly accommodations that provide both housing and

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supportive services for the residents including facilities that are typically referred to as independent living units, congregate care units, assisted living units, dementia or Alzheimer's units, or hospice units, but does not include elderly housing units that do not provide supportive services or a nursing care or convalescent care facility that provides nursing services.

Elderly day care facility means a facility that provides short-term care, supervision, and recreation and social activities for elderly and handicapped individuals in which the participants do not stay overnight ~~at the facility~~.

Elderly housing means a residential use occupied principally by elderly residents who are at least fifty-five (55) years of age (or in the case of a couple, at least one of whom is at least fifty-five) years of age) in which the accommodations are all dwelling units with private bathrooms and cooking facilities. Occupants of this residential use may also include handicapped individuals of any age. Elderly housing does not provide a regular program of services to all of its residents although individual residents may arrange for the provision of services within the facility. Elderly housing includes very limited shared community space and shared dining and kitchen facilities but may include limited facilities for allied health services, social services, and personal services such as physical and occupational therapy, a beauty shop, recreational programs, elderly day care, and similar programs. The use of these facilities must be accessory to the primary residential use of the facility but may be open to nonresidents of the facility. Elderly housing does not include eldercare facilities that are typically referred to as independent living units, congregate care units, assisted living units, dementia or Alzheimer's units, or hospice units, or a nursing care or convalescent care facility that provides nursing services.

Emergency operations means operations conducted by or on behalf of the municipality for the public health, safety, or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property, and livestock from the threat of destruction or injury.

Essential services means the construction, alteration, or maintenance of gas, electrical, or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry, or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms, all police call boxes, traffic signals, hydrants, and similar accessories, but ~~shall do~~ not include service drops or buildings which are necessary for the furnishing of such services.

Expansion of a structure means an increase in the floor area or volume of a structure, including all extensions such as, but not limited to, piers, or attached decks, garages, porches, and greenhouses.

Expansion of use means the addition of weeks or months to a use's operating season; additional hours of operation; or the use of more floor area or ground area devoted to a particular use.

FAA means the Federal Aviation Administration.

Family means one or more persons occupying a premises and living as a single housekeeping unit.

Fast-food outlets, drive-in restaurant, or snack bar means any establishment whose principal business is the sale of foods, frozen desserts, or beverages in ready-to-consume individual servings, for consumption either within the building or for carry-out, and the establishment includes a drive-up or drive-through service facility, a take-out window, or offers curbside service.

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FCC means the Federal Communications Commission.

Fill means materials such as select soils, rock, sand and gravel added to a land area or wetland area.

Filling means the act of adding and/or placing ‘fill’ into or upon a land area or wetland area.

Final subdivision plan means the final drawings on which an applicant’s plan of a subdivision is presented to the planning board for approval and which, if approved, must be filed for the record with the municipal clerk and York County registry of deeds.

Finger float means a float extending from the main float of a pier, ramp and float system that creates slips and/or increases the float edge available for mooring boats.

Flag means any fabric containing distinctive colors, patterns, or symbols, used as a symbol of a government or recognized political subdivision.

Float means a platform that floats and is anchored, moored or secured at or near the shore, used for landing or other purposes.

Flood hazard zone means that portion of land which has one percent chance of flooding in any given year, as designated on Flood Insurance Rate Maps issued by the Federal Insurance Administration, if available, or on Flood Hazard Boundary Maps issued by the Federal Insurance Administration, ~~otherwise~~.

Flood, One Hundred (100) Year. “One hundred (100) year flood” means the highest level of flood that, on the average, is likely to occur once every one hundred (100) years (that has a one-percent chance of occurring in any given year).

Floor area means the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

Food store means a retail establishment primarily engaged in the selling of a limited line of food items for home consumption such as, but not limited to, meat and seafood markets, fruit and vegetable markets, and retail bakeries.

Forest management activities means timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation, or maintenance of roads.

Forested wetland means a fresh water wetland dominated by woody vegetation that is twenty (20) feet tall or taller.

Foundation means the supporting substructure of a building or other structure including, but not limited to, basements, slabs, sills, posts, or frostwalls.

Freshwater wetland means noncoastal types of wetlands, including, but not limited to, freshwater swamps, marshes, bogs, and similar areas.

Functionally Water-Dependent Uses. ~~1. “Functionally water-dependent uses”~~ means those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters.

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~~2.Boathouses, while convenient to locate near the water, are not considered functionally water-dependent uses and must meet the same setback requirement as principal structures. The state no longer issues permits for construction of boathouses below the normal high water line due to the adverse environmental impact. Therefore, new boathouses must be located on uplands. Such boathouses have evolved from boat garages into what are really storage buildings. As such, they no longer need to be located at the water's edge in order to operate.~~

Gambling means that process in which one stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his/her control or influence, upon an agreement or understanding that he, she, or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guaranty and life, health, or accident insurance.

Gambling casino means a building, structure, or other facility used to allow, conduct, hold, maintain, or operate a game of chance, game of skill, electronic video machine, roulette, high-stakes beano or bingo, slot machines, or any other type of gambling activity. A gambling casino ~~shall~~ does not be construed to include a building structure or other facility when used incidentally by any bona fide nonprofit charitable, educational, political, civic, recreational, paternal, patriotic, or religious organizations, or a volunteer fire department or other public safety nonprofit organization when used for the conduct of any beano, bingo, raffles, games of chance, or other activities specifically permitted by Maine State Statute provided that such nonprofit organizations do not exist primarily to operate such activities and that all requirements of state statute including all requirements for licensing by the Chief of the Maine State Police are strictly met.

Gambling device means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

Game of chance means any game, contest, scheme, or device in which: (1) a person stakes or risks something of value for the opportunity to win something of value; (2) the rules of operation or play require an event, the result of which is determined by chance, outside the control of the contestant or participant; and (3) chance enters as an element that influences the outcome in a manner that cannot be eliminated through the application of skill.

As used in this definition, "an event the result of which is determined by chance" includes, but is not limited to, a shuffle of a deck or decks of cards, a roll of a die or dice, or a random drawing or generation of an object or objects that may include, but are not limited to, a card or cards, a die or dice, a number or numbers, or simulations of any of these. A shuffle of a deck or decks of cards, a roll of a die or dice, a random drawing or generation of an object or objects, or some other event the result of which is determined by chance that is employed to determine impartially the initial order of play in a game, contest, scheme, or device, does not alone make a game, contest, scheme, or device a game of chance.

Game of skill means any game, contest, scheme, or device in which a person stakes or risks something of value for the opportunity to win something of value and that is not a game of chance.

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Gasoline sales means the retail sales of fuel for motor vehicles including, but not limited to, gasoline, diesel fuel, bio-diesel, kerosene, ethanol, propane, and hydrogen, and related goods and services. The gasoline sales can be the principal use or accessory to another principal use such as a convenience store or other retail or service use.

Gasoline service station means an establishment for the retail sales of fuel for motor vehicles including, but not limited to, gasoline, diesel fuel, bio-diesel, kerosene, ethanol, propane, and hydrogen, and related goods and services and may provide service and minor repairs for motor vehicles.

Glare means excessive brightness that makes it difficult to see or that causes discomfort. Glare includes direct glare, disability glare, and discomfort glare as follows:

1. “Direct glare” means glare resulting from insufficiently shielded light sources or areas of excessive luminance within the field of view.

2. “Disability glare” means the effect of stray light in the eye whereby visibility and visual performance are reduced.

3. “Discomfort glare” means glare producing discomfort. It does not necessarily interfere with visual performance or visibility.

Grade plane means a reference plane representing the average of finished ground level adjoining the building at all exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane ~~shall~~is to be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet (1,829 mm) from the building, between the building and a point six feet (1,829 mm) from the building.

Grocery store means a retail establishment primarily selling prepackaged food products and household items for home preparation and consumption.

Gross floor area means the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls or a roof, plus the horizontal area of portions of the site used for customer seating, display of merchandise, or outdoor sales.

Hazardous waste means, as defined in 38 MRSAM.R.S., ~~§Section~~ 1319-0, a waste substance or material in any physical state, designated as hazardous by the Board of Environmental Protection under 38 MRSAM.R.S., ~~§Section~~ 1303-A.

Height of a building means the vertical measurement from the average grade between the highest and lowest elevation of the original ground level to the highest point of the roof beams in flat roofs; to the highest point on the deck of mansard roofs; to a level midway between the level of the eaves and highest point of pitched roofs or hip roofs; or to a level two-thirds of the distance from the level of the eaves to the highest point of gambrel roofs. For this purpose, the level of the eaves is taken to mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves. This is not intended to include weather-vanes or residential antennae that protrude from a roof, but does include all towers, excepting those utilized for amateur radio communications, and other structures. Building height restrictions do not apply to roadside utility poles approved by the town council of less than forty-five (45) feet in height above ground.

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Height of a structure means the vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area.

Height of wireless communication services facilities means the distance measured from ground level to the highest point on the tower or other structure, even if such highest point is an antenna.

High intensity soil survey means a map prepared by a certified soil scientist using the guidance defined and prepared by the Maine Association of Professional Soil Scientists. The soils must be identified in accordance with the National Cooperative Soil Survey. The map must show the location of all test pits used to identify the soils, and be accompanied by a log of each sample point identifying the textural classification and the depth to seasonal high-water table or bedrock at that point. Evaluations of single soil test pits for subsurface waste disposal do not meet the requirements for high intensity soil surveys and are not suitable replacement.

Home occupation means any activity carried out for gain by a resident of the premises with the permission of the property owner and conducted as an accessory use to the principal residential use.

Home Occupation, Major. “Major home occupation” means a type of home occupation that fails to meet all of the standards for a “minor home occupation” established in Section 16-32-8.1170, but is found by the zoning-board of appeals to satisfy the standards established in Section 16-32-8.1180 to ensure that a business results in no more than a minor intrusion in the quality of life of residents in the surrounding neighborhood.

Home Occupation, Minor. “Minor home occupation” means the least intensive type of home occupation that meets the standards established in Section 16-32-8.1170, Article XXVI, to ensure compatibility with the surrounding neighborhood.

Hospital means an institution specializing in providing in-patient and out-patient treatment and emergency services of a medical nature to human patients. A hospital may include the offices or facilities of independent service providers and/or a freestanding out-patient clinic or diagnostic facility that operates as part of, or an adjunct to, the main facility.

Hotel means a building in which lodging, or boarding and lodging capabilities are provided for more than twenty(20) persons, and offered to the public for compensation, and in which ingress and egress to and from rooms are made primarily through an inside lobby or office supervised by a person in charge at all hours. As such, it is open to the public in contradistinction to a rooming house or a motel, which are separately defined in this section.

Housing for the elderly means a residential building(s) or portion of a building principally used, designed, or adapted for use by residents fifty-five (55) years of age or older who are capable of living independently. “Housing for the elderly” may be contained in a single building or group of buildings and may provide services to the residents including, but not limited to, meals, housekeeping, recreation, transportation, and support services but may not provide the level of service or care provided by a nursing home.

Hydric soil means a soil that in its undrained condition is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of wetland (hydrophytic) vegetation. Soils found in Kittery which may be considered hydric soils include but are not limited to: Biddeford, Brayton, Chocorua, Rumney, Scantic, Sebago, Vasselboro, Naumberg, Raynham, and Waskish. All hydric soils listed in the Natural Resources Conservation Service list entitled *National Hydric Soils List by State* are included for consideration in this title. (<http://soils.usda.gov/use/hydric/lists/state.html>)

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~~shall be included for consideration in this title.~~

Hydrophytic vegetation means plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. Hydrophytic vegetation includes plants classified as Obligate Wetland, Facultative Wetland, or Facultative in the U.S. Fish and Wildlife Service publication, National List of Plant Species That Occur in Wetlands: 1988—Maine, as amended or superseded. This publication is available at the municipal offices for inspection.

Improvement plans means maps, plans, profiles, studies, cross sections and other required details for the construction of all improvements.

Individual private campsite means an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and no more than two recreational vehicles, and which involves site improvements which may include but not be limited to gravel pads, parking areas, fireplaces, or tent platforms.

Industrial means the assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

Industry, Heavy. “Heavy industry” means a facility and/or site used in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.

Industry, Light. “Light industry” means a facility used in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, blending, packaging, inside an enclosed structure. Basic industrial processing such as paper manufacturing, petroleum processing, manufacture of explosives, production of chemicals or fertilizer are not light industrial uses.

Inn means a commercial place of lodging which contains a dwelling unit occupied by an owner or resident manager, which has twelve (12) or fewer guest rooms, and may include a restaurant which also serves nonguests. Rentals to a single party for more than twelve (12) weeks in a calendar year are prohibited.

Intermittent stream means a channel of a stream, river, or brook that is without flowing surface water for at least one month of a year.

Invasive non-native plant means grasses, forbs, shrubs, or trees not native to the State of Maine, and which proliferate in and dominate vegetation to the exclusion or elimination of native plants.

July 13, 1977 means that date upon which a complete revision of the first zoning ordinances was adopted by the town of Kittery and upon which certain existing nonconforming conditions are considered to be protected (grandfathered).

Junkyard means a lot or part thereof, exposed to the elements, which is used for the sale or for the storage, keeping or abandonment of junk or scrap materials, or the storage, dismantling, demolition, abandonment or sale of construction equipment or machinery, or parts thereof or of unregistered automobiles or other vehicles not in condition for use on the public highway.

Landing means a place for loading or discharging persons or goods, as from a vessel.

Landscape planter strip means a vegetated area (naturally vegetated and/or landscaped) located adjacent and parallel to a road or street and designed to visually and functionally separate the roadway from the abutting property upon which it is located.

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Large, healthy tree means a tree with a diameter at breast height (dbh) of at least twelve (12) inches and which does not exhibit any indicators of stress, damage, disease, or decay that will limit its expected additional life to less than twenty (20) years.

Legally non-conforming means it was lawfully created, but became non-conforming due to a change in the Town Code.

Legislative body means Kittery town council.

Light fixture height means the vertical distance between the surface that will be illuminated by the fixture and the bottom of the light source (see cut-off fixture diagram).

Lot means a parcel of land, legally created and recorded having frontage upon an approved public or private street; or, a tract of land legally created and recorded prior to July 13, 1977.

Lot area means the area of land enclosed within the boundary lines of a lot, minus: (1) land below the normal high-water line of a water body or upland edge of a coastal wetland; (2) areas beneath planning board-approved right-of-way; and (3) land within public street rights-of-way.

Lot width means the horizontal distance between the side lot lines, measured at the setback lines.

Low intensity recreation means outdoor recreational activities which have a low impact on the environment and neighborhood and require no motorized vehicles, significant earthmoving, or substantial structures such as: hiking, fishing, canoeing, hunting, cross-country skiing, and wildlife observation and study. Benches and boardwalks, steps, railings, and other structures necessary to provide safe accessibility for physically handicapped persons are allowed.

Lumen means a standard measure of light energy generated by a light source, normally reported by the manufacturer of the lamp or bulb.

Manufactured housing means a structural unit or units designed for occupancy, and constructed in a manufacturing facility and transported by the use of its own chassis, or placed on an independent chassis, to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing, and may be purchased or sold by a dealer in the interim. For purposes of this title, two types of manufactured housing are included. They are: ~~mobile home~~ mobile homes and modular homes.

Marina means a principal marine use as listed in Table 16-32.8.490, line 27, A through C, as defined in Chapter 16.08 of this code.

Market value means the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Mass transit station means a place where people transfer between modes of transportation or any premises for the transient housing or parking of buses, trains, or ride-sharing vehicles and the loading and unloading of passengers.

Mechanical service means establishments primarily engaged in mechanical or electronic repair or maintenance of motorized or mechanical equipment such as, but not limited to, welding repair, small engine repair, tool sharpening, and refrigeration and air conditioning repair, but excluding repair garages.

Mineral/earth material exploration means hand sampling, test boring, or other methods of determining the nature or extent of mineral/earth resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

Mineral extraction means any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or

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other like material from its natural location and to transport the product removed, away from the extraction site.

Mini storage means a commercial facility for the storage of consumer or business property on a rental basis in which the tenant receives the exclusive use of a storage unit or locker and can access the unit to drop-off or retrieve property at designated times.

Mixed-use building means a building occupied by two or more types or categories of principal uses (for example, residential and office, or office and retail) in which any category of uses occupies at least ten (10) percent of the gross floor area of the building.

~~Mobilehome~~**Mobile home park** means a parcel of land under unified ownership approved by the board for the placement of three or more manufactured homes.

~~Mobilehome~~**Mobile home park lot** means the area of land on which an individual home may be situated within a ~~mobilehome~~**mobile home** park and which is reserved for use by the occupants of that home.

~~Mobilehome~~**Mobile homes** means those units constructed after June 15, 1976, commonly called “newer ~~mobilehome~~**mobile homes**,” which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures, transportable in one or more sections, which, in the traveling mode, are fourteen (14) body feet or more in width and are seven hundred fifty (750) or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundation, when connected to the required utilities, including the plumbing, heating, air conditioning or electrical systems contained therein; except that the terms ~~shall~~include any structure which meets all the requirements of this paragraph, except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.

Modular homes means those units commonly called “modular homes,” which the manufacturer certifies are constructed in compliance with the state of Maine’s Manufactured Housing Act and Regulations, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning, or electrical systems contained therein.

Motel means a building or group of detached or connected buildings designed, intended, or used primarily to provide sleeping accommodations without cooking facilities for travelers for compensation and having a parking space adjacent to a sleeping room. An automobile court or a tourist court with more than one unit or a motor lodge ~~shall be~~is deemed to be a motel.

Multiunit residential means a residential structure containing three or more residential dwelling units.

Municipal Separate Storm Sewer System, or MS4 or “MS4,” means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State.

Municipality means town of Kittery, Maine.

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Navigable waters means the “waters of the United States including territorial seas” as defined in the Federal Clean Water Act and 33 CFR Part 328, as amended.

Net residential acreage means the gross available acreage less the area required for streets or access and less the areas of any portions of the site which are unsuitable for development as outlined in Chapter 16-28-7.

Net residential density means the number of dwelling units per net residential acre.

New motor vehicle sales means a commercial establishment whose primary business is the buying and selling or offering to negotiate a sale of new motor vehicles including related service activities and has a franchise from a distributor or manufacturer. An establishment is “engaged in the business of buying, selling, or offering to negotiate the sale of a vehicle” if that business buys motor vehicles for the purpose of resale, sells, or offers to negotiate the sale of more than five motor vehicles in any twelve (12) month period, or displays or permits the display of three or more motor vehicles for sale at any one time or within any thirty (30) day period upon the premises, unless that person has owned and registered each vehicle for at least six months.

Nonconforming structure building means a structure building that does not meet any one or more of the following dimensional requirements: setbacks, yard, height, ~~and/or~~ lot coverage. It is allowed solely because it was ~~in lawful existence on July 13, 1977~~ lawful when created and, ; or is the result or became legally non-conforming as a direct result of a change in the provisions dimensional requirements of this OrdinanceCode. of legally authorized development created between July 13, 1977 and April 26, 1990 and became nonconforming as a direct result of the implementation of this title.

Nonconforming, legally. (See Legally non-conforming).

Nonconforming lot of record means a single lot of record, which was created prior to July 13, 1977, or subsequently created by legislative or judicial decision, which does not meet the area and/or frontage requirements of the district in which it is located; or is the result of legally authorized development created between July 13, 1977 and April 26, 1990 and became nonconforming as a direct result of the implementation of this title.

Nonconforming use means use of buildings, structures, premises, land or parts thereof which is not allowed in the district and/or zone in which it is situated, premises that is not permitted to be located in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence when created on July 13, 1977; or, or became legally non-conforming as a direct result of a change in the provisions use requirements of this OrdinanceCode. is the result of legally authorized development created between July 13, 1977 and April 26, 1990 and became nonconforming as a direct result of the implementation of this title.

Normal high water line of non-tidal waters means ~~the~~ that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous to rivers and other water bodies that support non-forested wetland vegetation and hydric soils and are at the same or lower elevation as the water level of the river or other water body during the period of normal high-water are considered part of the river or other water body. In the absence of conclusive evidence of the above-cited characteristics, the normal high-water line of coastal water bodies shall be that line on the shore reached by the shoreward limit of the rise of the average spring high tide, herein designated as the elevation six feet above mean sea level. In the case of wetlands adjacent to rivers, the normal high-water line is the upland

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~~edge of the wetland, and not the edge of the open water. Note: Adjacent to tidal waters, setbacks are measured from the upland edge of the “coastal wetland.”~~

Nursery school means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program which provides care for three or more children in accordance with 22 ~~MRSA~~ M.R.S., ~~e-Section~~ 1675, provided that:

1. No session conducted for the children is longer than three and one-half hours in length;
2. No more than two sessions are conducted per day;
3. Each child in attendance at the nursery school attends only one session per day; and
4. No hot meal is served to the children.

Nursing Care Facility, Long-Term. “Long-term nursing care facility” means a facility that is licensed by the state of Maine to provide nursing care to persons who are unable to care for themselves. The facility provides long-term residential and nursing care to its residents. The facility does not provide hospital services except as incidental to the delivery of nursing care. A long-term nursing care facility does not include any facility that is defined as an eldercare facility.

Official business directional sign (OBDS) means any sign erected and maintained in accordance with the Maine Traveler Information Services Act, 23 ~~MRSA~~ M.R.S., ~~Chapter~~ Section 21, and regulations adopted pursuant to it, and which complies with the requirements of this title.

Official map means the map adopted by the municipality showing the location of public property, ways used in common by more than two owners of abutting property, and approved subdivisions, and any amendments thereto adopted by the municipality or additions thereto resulting from the approval of subdivision plans by the planning board and the subsequent filing for record of such plans.

Official submittal date means the date upon which the town planner accepts a complete application and issues a receipt so indicating.

Open space means and includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed natural state. “Open space” does not include areas occupied by a building or a parking area. Vegetated surfaces of outdoor commercial recreational uses may be used to satisfy up to fifty percent (50%) of the required open space on any parcel.

Outdoor service areas means areas located outside of a building or structure that are used for the delivery, handling, storage, or processing of materials, goods, or wastes including areas used for the servicing, repairing, washing, or fueling of motor vehicles and equipment.

Owner means any person, corporation or other legal entity having record title ownership to the property or the expressly authorized agent or designee thereof.

Parcel. See “Tract or parcel of land.”

Parapet means the extension of the wall(s) of a building above the roof eave and/or roof line.

Parking lot means an area other than part of a road or residential yard space which is allocated for the parking of motor vehicles for compensation and is able to be used for such purposes.

Parking space means a design dependent area as indicated in Figure 2 for Chapter 16.32, set out at the end of Chapter 16.32, ~~each~~ Each parking space ~~shall is to~~ contain a rectangular area at least nineteen (19) feet long and nine feet wide. Lines demarcating parking spaces may be

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drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This ~~shall be~~ is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto ~~shall~~ must be constructed as to be usable year round.

Patio means an unenclosed, unroofed, exterior floor-like surface, usually composed of brick, stone, or concrete, situated no higher than eighteen (18) inches above ground level, accessory to a dwelling and serving as an area for outdoor living.

Person means any individual, firm, corporation, municipality, quasi-municipal corporation, two or more individuals having a joint or common interest, State agency or Federal agency or other legal entity.

Personal services means establishments primarily engaged in providing services generally involving the care of one's personal appearance or apparel including, but not limited to, barbers and beauty shops, laundries, photographic studios, shoe repair, garment altering, and diaper services.

Pier means a structure built out into the water generally with piles for use as a landing place.

Post-Construction Stormwater Management Plan means BMPs and Stormwater Management Facilities employed by a new development or redevelopment to meet the stormwater standards of the municipality's subdivision, site plan, or other zoning, planning or other land use ordinances.

Practicable means available and feasible, considering cost, existing technology, and logistics based on overall project purposes.

Pre-existing accessory-use towers/antennas means legally existing prior to December 21, 1997, WCSF, towers/antennas and alternative tower structures. Enlargements of WCSF, accessory use towers/antennas legally existing prior to December 21, 1997 must conform to the requirements of this title.

Preliminary subdivision plan means the preliminary drawings indicating the proposed layout of the subdivision to be submitted to the planning board for its consideration.

Principal building means the primary building on a lot or a building that shelters or encloses the principal use on a lot.

Principal structure means the primary structure on a lot or a structure that supports, shelters, or encloses the principal use on the lot.

Principal Use.

1. "Principal use" means the primary or predominant use. An activity that is conducted in conjunction with ~~another~~ the principal use and such activity that either: (1) constitutes only an incidental or insubstantial part of the total activity that takes place on a lot, or (2) is commonly associated with the principal use and integrally related to it, is regarded as "accessory to the principal use."

2. An "accessory to the principal use" is regarded as "incidental or insubstantial" if it is both incidental ~~or~~ and insubstantial in and of itself, and in relation to the principal use. Quantitative measures for consideration in this determination include the percentage and total amount of square footage attributed to the ~~second~~ accessory to the principal use and sales or ~~in-come~~ income derived from the ~~second~~ accessory to the principal use.

Private marina use structure means a structure which is owned and/or used by a private group, club, association or other legal entity's organization, and is used by its members only, and has frontage on navigable water, and as its principal use provides offshore moorings and/or docking

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facilities for vessels for use by its members and/or guests. The private marina may also provide accessory boating services. These accessory boating services may be provided to the boating public, members or guests.

Prudent avoidance means in any case where above ground electrical utilities are approved, the plan ~~shall~~is to be designed to avoid human residences as distant as possible, without prohibitive cost.

Public facility means any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

Public recreation means a not-for-profit recreational facility open to the general public at no charge or a subsidized charge.

Public utility means as defined in Title 35-A, M.R.S., ~~§Section 102-MRSA~~, as amended.

Qualified Post-Construction Stormwater Inspector means a person who conducts post-construction Stormwater Management Facilities inspections for compensation and who has received the appropriate training for the same from the Maine Department of Environmental Protection.

Recent floodplain soils means the following soil series as described and identified by the National Cooperative Soil Survey: Alluvial, Cornish, Charles, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk, Rumney, Saco, Suncook, Sunday, and Winooski.

Recreational facility means a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

Recreational vehicle means a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pickup camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Repair garage means an establishment providing for the repair or servicing of motor vehicles. A repair garage does not include activities that are defined as mechanical service or a junkyard.

Repair service means a business providing for the repair of personal or small business property such as radios and televisions, household or office electrical or electronic equipment, watches, clocks and jewelry, furniture and upholstery, sporting equipment, and similar items but not including items included under mechanical services or automotive services and repair.

Replacement system means a system intended to replace: (1) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure; or (2) any existing overboard wastewater discharge.

Research and development means a building or group of buildings in which are located facilities for technical or scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the facility.

Residential care unit means a type of residential accommodation in an eldercare facility that has private sleeping and bathroom facilities but does not have permanent, complete cooking facilities within the unit. The occupant of a residential care unit typically eats all or most of ~~his/her~~ meals in a shared dining room. Residential care units may have a portable or removable kitchen or partial kitchen facilities such as a refrigerator and microwave oven. A residential care unit may be an apartment with a separate bedroom, a suite, or a room. A residential care unit is distinct from a dwelling unit that is defined separately.

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Residential development use pier, ramp and float system means a pier and/or ramp and float system which is used in common by lot owners or residents of a subdivision or residential planned development. The purpose is to provide waterfront access to the owners of lots in a residential development that has the potential for more than one waterfront lot. The object is to minimize the number of piers, ramps and floats resulting from new development.

Residential home occupation use pier, ramp and float system means a pier and/or ramp and float system which is used for the residential home occupation workers in an approved functionally water-dependent home occupation (minor or major), in addition to its customary residential accessory use.

Residential joint/shared-use pier, ramp and float system means a pier and/or ramp and float system which is used by the owners of not more than four residential shorefront lots, at least one boundary of whose building lot lies within one thousand (1,000) feet of the lot on which the joint/shared-use pier is constructed.

Residential single-use pier, ramp and float system means a pier and/or ramp and float system which is used by owner(s) of a single residential shorefront lot.

Residual basal area means the sum of the basal area of trees remaining on a harvested site.

Residual stand means a stand of trees remaining in the forest following timber harvesting.

Restaurant means an establishment where food or food and drink are prepared and sold for consumption on the premises by the public and includes cafes, coffee shops, and similar establishments that serve food.

Resubdivision means the division of an existing subdivision or any change of lot size therein or the relocation of any street or lot in a subdivision, or any changes thereto.

Retail use means any business engaged primarily in the sale of goods for personal or household consumption and/or use, and not for resale. The term “retail use” does not include specific types of retail uses that are individually listed in Chapter 16-42-.3.

Right-of-Way, Private. “Private right-of-way” means a platted and dedicated access route normally to back lot(s)/and as approved by the planning board and recorded in the York County registry of deeds.

Riprap means rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.

River means a free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty-five (25) square miles to its mouth.

Road means a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles.

Rooming house means a residential use in which the owner or manager of the facility resides on the premises and in which more than three persons who are not part of the owner/manager’s family, are housed in rooms for compensation with or without meals. This includes fraternities and sororities.

Roulette means a game of chance in which players bet on the compartment of a revolving wheel into which a small ball will come to rest.

Salt marsh means areas along coastal waters (most often along coastal bays) which support salt-tolerant species, and where at average high tide during the growing season, the soil is regularly inundated by tidal waters. The predominant species is salt marsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

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Salt meadow means areas which support salt-tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

Screen means a method of significantly reducing the impact of noise and unsightly visual intrusions with less offensive or more harmonious elements, such as plants, berms, fences, walls, or any appropriate combination thereof.

Screening means either, (1) a strip of at least ten (10) feet wide, densely planted (or having equivalent natural growth) shrubs or trees at least four feet high at the time of planting, of an evergreen type that will grow to a year-round dense screen at least six feet high in three years; or (2) an opaque wall or barrier of uniformly colored fence at least six feet in height. Screening of either type ~~shall~~must be maintained in good condition at all times.

Selected commercial recreation means a recreational facility operated as a business and open to the public for a fee which is listed as one of the following types of allowed recreational activities:

1. Indoor commercial recreation limited to: billiards and pool, bowling alley, dancehall, swimming pool, ice skating rink, tennis, racquetball or squash courts, shooting or archery range, weight-lifting equipment center, aerobics/exercise center, roller skating rinks, basketball courts, gymnasium, concert hall, aquarium, botanical and zoological garden, bingo parlor, simulated sports; and

2. Outdoor commercial recreation limited to: riding stables, golf course, swimming pool, driving range, miniature golf, archery range, tennis courts, balloon rides, roller skating rink, botanical and zoological garden, and equestrian sports excluding racing.

Types of commercial recreation not listed are not considered to be included within the definition of "selected commercial recreation."

Service drop means any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. In the case of electric service:

a. The placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway at right-of-way; and

b. The total length of the extension is less than one thousand (1,000) feet.

2. In the case of ~~telephone~~telecommunications service:

a. The extension, regardless of length, will be made by the installation of telephone wires to existing utility poles; or

b. The extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

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Setback means the minimum horizontal distance from an identified object, line, boundary or feature to the nearest part of a regulated object, use or feature. ~~required from either the upland edge of a wetland or the normal high water line to the nearest part of a structure (excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches), road, parking area, or other regulated structure or activity.~~

Note: See Section 16.32, 8.490(N) for minimum setbacks in the shoreland zone and Table for Chapter 16.12, set out at the end of Chapter 16.12, for setbacks from water bodies and wetlands outside the shoreland zone. See Article XIII of Chapter 16.28 for applying setbacks in special situations.

Setback from streams, water bodies and wetlands ~~means the minimum horizontal distance required in Table for Chapter 16.12, set out at the end of Chapter 16.12, from either nearest horizontal distance from the upland edge of a wetland or from the normal high water line to the nearest part of a structure (excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches), road, parking area, or other regulated activity. See Article XIII of Chapter 16.28 for applying setbacks in special situations.~~ means the minimum horizontal distance allowed from the upland edge of a wetland and/or from the normal high water line to the nearest part of a structure (excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches) such as roads, parking areas, or other regulated activities. See Table 16.34. Minimum Setbacks from Wetlands and Water Bodies for required horizontal distances, and Article XIV of Chapter 16.34 for applying setbacks in special situations.

Shop in pursuit of trades means an establishment occupied by a business or craftsperson in a skilled trade, including, by way of example only, plumbing, carpentry, or electrical work. Not more than ten (10) people may be employed at and/or work from the shop. The shop may include work space, storage space, and/or office space. A shop in pursuit of trades does not include “construction services” which is separately defined.

Shore frontage means the width of a lot as it fronts the shore as measured in a straight line between the point of intersection of the side lot lines with the shoreline at normal high-water elevation.

Shorefront development plan means a plan for any development extending into or within one hundred (100) feet of the upland edge of a coastal wetland, or into or within one hundred (100) feet of the upland edge of a fresh water wetland shown on the official shoreland zoning map, including but not limited to public and private access paths; piers, ramps and floats; storage of boats and/or floats; clearing of vegetation, visual impact and controls to assure continuing conformance to the plan.

Shoreland zone ~~means the land area within two hundred fifty (250) feet, horizontal distance, of the normal high water line of any river or saltwater body; within two hundred fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland; or within two hundred fifty (250) feet, horizontal distance, of the upland edge of a freshwater wetland shown on the official shoreland zoning map. Notwithstanding the above statement, the regulated shoreland zone does not extend beyond the centerline of the portion of a publicly accepted street that generally parallels the normal high water line of any river or saltwater body or upland edge of a wetland shown on the official shoreland zoning map. However, in all cases the regulated shoreland zone extends a minimum of seventy-five (75) feet, horizontal distance, of the normal high water line of any river or saltwater body or the upland edge of a wetland shown on the official shoreland zoning map.~~

Shoreline means the normal high water line or upland edge of a wetland.

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Sign means any structure or part of the structure attached thereto or painted or represented thereon, which ~~shall~~ displays or includes any letter, word, model, banner, flag, pennant, insignia, trade name, trademark, logo, device, or representation used as, or which is in the nature of any announcement of the purpose of a business, entity or person, direction or advertisement. The term sign does not include a flag.

Sign area means the enclosed space within a geometric figure which contains the advertising message, illustration, insignia, or display, together with any frame, color, or other material which comprises the display and is used to differentiate or draw attention to the sign and away from background. Each face of a sign ~~shall be~~ is considered a separate sign for area computations, but supporting brackets and posts ~~shall are not be~~ included.

Sign, Changeable Message. “Changeable message sign” means any sign or portion thereof designed to allow characters, letters, and numbers on the face of the sign to be changed or rearranged.

Sign, Freestanding. “Freestanding sign” means any sign supported by a structure or supports that are permanently anchored in the ground and that is independent from any building.

Sign, Real Estate. “Real estate sign” means any sign advertising real estate for sale, lease, or rent.

Sign, Temporary. “Temporary sign” means a sign that is intended to remain where it is erected or placed for a period of time not to exceed twenty-one (21) days in any calendar quarter.

Sign, Trailer. A “trailer sign” means a portable sign mounted on a chassis and wheels or supported by legs.

Slot machine means any machine which operates by inserting a coin, token, or similar object, setting the internal mechanism of the machine in motion, and by the application of the element of chance may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tickets, or something of value.

Soils.

1. “Poorly drained soils” means soils where water is removed so slowly that the water table is at or within twelve (12) inches of the ground surface for six to nine months of the year.

2. “Very poorly drained soils” means soils in an area where water is removed so slowly that the water table is at or within twelve (12) inches of the ground surface for nine to ten (10) months of the year.

Something of value means: (1) any money or property; (2) any token, object, or article exchangeable for money, property, amusement, or entertainment; or (3) any form of credit or promise directly or indirectly contemplating transfer of money or property, or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.

Special exception means a use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning districts as special exceptions, if specific provision for such special exceptions is made in Chapter 16.42.3.

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Story means that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. Any building that contains no floors in the vertical plan, every ten (10) feet or portion thereof ~~shall counts~~ as a floor.

Story above grade means any story having its finished floor surface entirely above grade, except that a basement ~~shall be~~ considered as a story above grade where the finished surface of the floor above the basement is:

1. More than six feet (1,829 mm) above the grade plane;

2. More than six feet (1,829 mm) above the finished ground level for more than fifty percent (50%) of the total building perimeter; or

3. More than twelve (12) feet (3,658 mm) above the finished ground level at any point.

Stream or brook means a channel between defined banks including the floodway and associated floodplain wetlands where the channel is created by the action of surface water and characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing ~~water-borne~~ waterborne deposits on exposed soil, parent material, or bedrock.

Street means a way established or maintained under public authority, or a minimum forty (40) foot wide private way constructed to town standards as contained in Chapter 16.32, approved by the planning board and plotted, dedicated and recorded, or a way shown on a plan of a subdivision duly approved by the planning board. Also included are such ways as alleys, avenues, boulevards, highways, roads, streets, and other rights-of-way.

Street frontage means a continuous portion of a boundary of a lot which abuts a street, ordinarily regarded as the front of the lot. When a lot is bounded by more than one street, any one of them, but only one, may be designated as the frontage street by the owner, provided that the lot meets the frontage requirement on that street, front, side and rear yard setbacks, and that the principal building is numbered on that street.

Street line means the exterior line of a street right-of-way which separates it from abutting lots.

Structurally altered means any work which requires or contemplates any changes to the structural capabilities of a building.

Structure means anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind, or anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground. The term includes decks. The term does not include fences less than eight (8) feet in height, nor any required by the Planning Board or town planner to be taller; flagpoles no higher than fifty (50) feet in height; signs located in conformance with Article XII of Chapter 16.32; and electricity generators and propane and oil tanks for residential use only and they pads on which they are located, provided the pad is less than twenty (20) square feet in size.

Subdivider means any person, firm, corporation, or other legal entity making application for the subdivision of land or buildings within the town of Kittery.

Subdivision means the division of a tract or parcel of land into three or more lots within any five-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure of structures on a tract or parcel of land

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into three or more dwelling units within a five year period, the construction or placement of three or more dwelling units on a single tract of parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into three or more dwelling units within a five year period, as set forth in 30-A M.R.S., §4410 as amended.

Subdivision, Major. “Major subdivision” means any subdivision containing more than four lots, or any subdivision requiring any new public street extension, or the extension of public or municipal facilities.

Subdivision, Minor. “Minor subdivision” means a subdivision containing not more than four lots.

Subsurface sewage disposal system means a collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term ~~shall does~~ not include any wastewater discharge system licensed under 38 MRSA, ~~Section M.R.S., §414, any surface wastewater disposal system licensed under 38 MRSA, Section 413, subsection 1A-M.R.S., §413, §1A, or any public sewer. The term shall does~~ not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 MRSA ~~Section Chapter 13, Subchapter 1 M.R.S., §13.1.~~

Sustained slope means a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Temporary, intra-family dwelling unit means a temporary accessory dwelling unit to a dwelling that is designed for and occupied by either a:

1. Person(s) related by blood or marriage within the sixth degree to an occupant of the property;

2. Personal care provider(s) to an occupant of the property;

3. Personal care receiver(s) from an occupant of the property; or

4. Person(s) with a demonstrably familial type relationship to an occupant of the property.

Temporary structure means a structure which by type and materials of its construction is erected for not more than thirty (30) days with a permit from the CEO. Such structures ~~shall~~ include tents, portable band stands, bleachers, reviewing stands, a ~~mobile home~~ mobile home, tractor trailers, or structures of a similar character. Temporary structures erected in conjunction with licensed circuses ~~shall are~~ not be construed to be temporary structures under this title.

Theater means a building or portion of a building for the showing of motion pictures or the presentation of dramatic, musical, or other live performances.

Timber Harvesting.

1. “Timber harvesting” means the cutting or removal of at least ten (10) cords, or the equivalent, of timber ~~from a contiguous~~ from contiguous parcels of land under common ownership during a calendar year for the purpose of selling or processing forest products. Clearing of land necessary for approved construction is not considered as timber harvesting.

2. For the purposes of this title, timber harvesting activities taking place outside the Shoreland Overlay Zone on land classified by the Town Assessor ~~town assessor~~ as “tree growth” ~~enrolled in the State tree growth program (36 M.R.S., §571-584-A) and which is~~ conducted in compliance with

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a forest management and harvest plan prepared by a licensed professional forester ~~shall is not be~~ considered timber harvesting ~~and if the activity takes taking place outside the shoreland zone.~~

Tower means any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and similar structures.

Tract or parcel of land means all contiguous land in the same ownership except that lands located on opposite sides of a public or private street are considered separate tracts or parcels of land unless the street was established by the owner of land on both sides of the street after September 22, 1971.

Trailer means any vehicle including campers used or so constructed as to permit its being used as a conveyance on the public streets and highways and may be duly licensed as such, and constructed in such a manner as will permit occupancy thereof as a temporary dwelling for one or more persons. A trailer ~~shall is not be~~ construed as a ~~mobile home~~ mobile home for the purposes of this title.

Trailer park means an area occupied or designed to be occupied by trailers for seasonal use only from May through October.

Transportation terminal means land and buildings used as a relay station for the transfer of a load from one vehicle to another. The terminal facility may include storage areas for trucks and buildings or areas for the repair of trucks associated with the terminal.

Traveled way means that portion of a road or driveway designed for vehicle travel. Where a road or driveway surface is paved, the traveled way ~~shall be is~~ that portion of the road surface between the edges of the paved width.

Tributary stream means a channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing ~~water-~~ waterborne deposits on exposed soil, parent material, or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term “stream” as defined elsewhere in this title, and only applies to that portion of the tributary stream located within the Shoreland or Resource Protection Overlay Zones of the receiving water body or wetland.

Upland edge means the boundary between upland and wetland.

For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the elevation being six feet above mean sea level based on the North American Vertical Datum of 1988 (NAVD 88), including all area affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are 20 feet tall or taller; whichever is more restrictive.

Used car lot means a lot exposed to the elements which is used for the sale of secondhand automobiles or trucks which can pass the state inspection tests in their existing conditions.

Variance.

1. “Variance” means a relaxation of the terms of this title where such relaxation will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the

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result of the actions of the applicant, a literal enforcement of the title will result in unnecessary or undue hardship.

2. As used in this title, a variance is authorized only for height, area and size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited ~~shall is~~ not ~~be~~ allowed by variance, nor ~~shall~~ may a variance be granted because of the presence of nonconforming uses in the particular zone or adjoining zone.

Vegetation means all live trees, shrubs, ground cover, and other plants.

Veterinary hospital means a commercial establishment, operated by a licensed veterinarian, for the medical and surgical care of sick or injured animals.

Volume of a structure means the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

Warehousing and storage means premises where goods or materials are stored in an enclosed structure or in specific outdoor areas.

Waste means any unwanted or discarded substance or material, whether or not such substance or material has any future use and includes any substance or material that is spilled, leaked, pumped, poured, emitted, disposed of, emptied, or dumped onto the land or into the water.

Water body means any pond, river, brook, stream, intermittent stream, or coastal wetland.

Water crossing means any project extending from one bank to the opposite bank of a water body whether under, through, or over the watercourse. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings.

Water-Dependent Use. See "Functionally water-dependent use."

Wetland means areas that under normal circumstances have hydrophytic vegetation, hydric soils, and wetland hydrology as determined in the Corps of Engineers Wetlands Delineation Manual - *Waterways Experiment Station Technical Report Y-87-1*, January 1987" (1987 manual). This definition of wetland is based on the 1987 manual and is not subject to further revisions and/or amendments.

Wetland Alteration means filling, dredging, removal of vegetation, muck or debris, draining or otherwise changing the hydrology; construction or repair of a structure. On a case-by-case basis and as determined by the planning board, the term "alteration" may exclude:

- (1) An activity of installing a fence post or planting shrubs by hand;
- (2) Alteration of an existing structure such as a bench or hand rail; and
- (3) The construction, repair or alteration of a structure, with minimal impact, such as a nesting box, pasture fence or staff gauge.

Wetland creation means conversion of a nonwetland area into a wetland where a wetland never existed.

Wetland enhancement means an activity increasing the value of one or more functions in an existing wetland. Activities may also include improvements to upland buffers where timber harvesting or other activities have degraded the value for wildlife.

Wetland functions means the roles wetlands serve which are of value to society or the environment including, but not limited to, flood water storage, flood water conveyance, groundwater recharge and discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fisheries, wetland plant habitat, aquatic habitat, and wildlife habitat.

Wetland hydrology means in general terms, a condition where permanent or periodic inundation or prolonged soil saturation is sufficient to create anaerobic conditions in the soil. According to the

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1989 Manual, inundation or saturation for one week or more during the growing season and a water table within at least eighteen (18) inches of soil surface is required to meet the wetland hydrology criterion.

Wetland preservation means the maintenance of an area of wetlands or adjacent upland so that it remains in a natural or undeveloped condition. Preservation measures include, but are not limited to, conservation easements and land trusts.

Wetland restoration means an activity returning a wetland from a disturbed or altered condition with lesser acreage or fewer functions to a previous condition with greater wetland acreage or function.

Wetland setback means the distance measured from the upland edge of a wetland to a structure.

Wetland value means the importance of a wetland with respect to the individual or collective functions it provides.

Wetland vegetation means those plants classified as Obligate, Facultative Wetland, or Facultative in the U.S. Fish and Wildlife Service publication, Wetland Plants of the State of Maine 1986, as amended or superseded.

Wetlands associated with rivers means wetlands contiguous with or adjacent to a river, and which during normal high water, are connected by surface water to the river. Also included are wetlands which are separated from the river by a berm, causeway, or similar feature less than one hundred (100) feet in width, and which have a surface elevation at or below the normal high-water line of the river. Wetlands associated with rivers are considered to be part of that great pond or river.

Wetlands impact means any disturbance, including but not limited to filling, dredging, draining, bridging, and cutting or clearing of vegetation, in the wetland and buffer areas.

Wharf means a structure on the shore, parallel to the shoreline of navigable waters, alongside of which vessels can be brought for loading or unloading.

Wholesale business means the sale of goods not produced on the premises primarily to customers engaged in the business of reselling the goods.

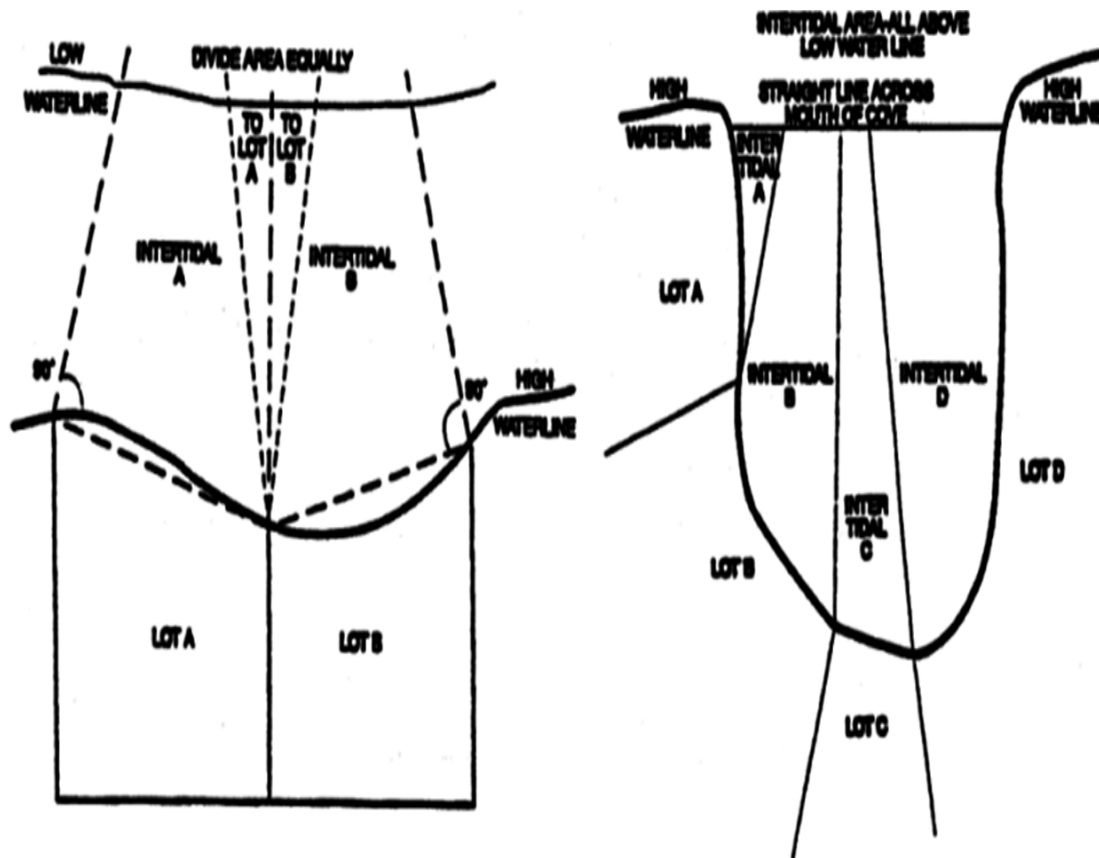
Wireless communication services facilities (WCSF) means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services and associated development. Telecommunications facilities ~~shall be~~ are considered a principal use.

Work means activity related to physical change for improvements and not the engineering, production or correction of construction drawings, or real estate marketing.

Yard means an unoccupied space, open to the sky, on the same lot with a building or structure.

Yard, Accessory Building Side and Rear. “Accessory building side and rear yard” means, in the RR, UR, SR, and LB zones, accessory building side and rear yard setbacks that ~~shall be~~ are at least ten (10) feet, except no building ~~shall~~ may be closer than thirty (30) feet to a principal building on an adjoining lot.

Yard, Front. “Front yard” means an open area unoccupied by any structure, excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches, on the same lot with the building between the front line of the building and the front line of the lot and extending the full width of the lot as it abuts along a public or private street.



REVISED
 nices,
 ie
 : full width
 nices,
 ie
 front yard
 -14-08
 d. 7-05;
 ; Ord. 2-
 -§ 2.2,

Draw a base line between the two corners of each lot where they strike the shore, and from these corners extend parallel lines perpendicular to the base line to the low-water mark, or to a point one hundred (100) rods distant from the high-water mark, and if the shoreline is straight the lines thus extended diverge or interfere with each other, the triangular parcels thrown out or overlapped thereby must be equally divided between the adjoining proprietors (see Diagram 1). In dividing intertidal land in a cove where there is no natural channel, and which is entirely above the low-water mark, run a line across the mouth of the cove, to which lines should be drawn from the corners, at the high-water mark, of the lands of the proprietors abutting on the cove in such a way as to make the sections on the straight line proportional to the respective frontages on the water line (see Diagram 2). Where there are channels within a cove from which the tide does not ebb, they will give the direction in which the lines dividing the intertidal land must run.

(Land use and dev. code Fig. 2-1, 1994)

Chapter 16.423

ZONING REGULATIONS

Sections:

Article I. In General

16.12.3.010 Purpose.

16.12.3.020 Establishment of zones.

16.12.3.030 Zoning map.

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Article II. ~~Zone Definitions, Uses, Exceptions, Standards~~

~~16.12.3.035 Gambling casinos prohibited in all zoning districts.~~

~~16.12.3.040 Rural residence—RR.~~

~~16.12.3.050 Suburban residential—SR.~~

~~16.12.3.055 Kittery Point Village—KPV.~~

~~16.12.3.060 Urban residential zone—UR.~~

~~16.12.3.070 Village residence—VR.~~

~~16.12.3.080 Rural conservation—RC.~~

~~16.12.3.090 Resource protection—RP.~~

~~16.12.3.100 Local business—LB.~~

~~16.12.3.101 Local business 1—LB-1.~~

~~16.12.3.105 Business park—BP.~~

~~16.12.3.110 Commercial—C.~~

~~16.12.3.120 Industrial—I.~~

~~16.12.3.130 Mixed-use—MU.~~

~~16.12.3.140 Badgers Island urban—BI.~~

~~16.12.3.150 Kittery Foreside—KF.~~

Article I. _____ In-General

~~16.12.3.0101~~ Purpose.

The purpose of this chapter is to establish zones, uses, standards and dimensional requirements for the Town of Kittery to implement the adopted Comprehensive Plan. ~~(Ord. 15-08 (part): land use and dev. code § 3.1, 1994)~~

~~16.12.3.0202~~ Establishment of zones.

To implement the provision of this title, the ~~town of Kittery~~ is divided into the following base and overlay zones:~~classes of districts~~:

Base Zones

Rural residence—RR.	<u>Residential – Rural</u>	<u>R-RL</u>
Suburban residential—SR.	<u>Residential – Suburban</u>	<u>R-S</u>
Kittery Point Village—KPV.	<u>Residential – Kittery Point Village</u>	<u>R-KPV</u>
Urban residential zone—UR	<u>Residential – Urban</u>	<u>R-U</u>
Village residence—VR	<u>Residential - Village</u>	<u>R-V</u>
Rural conservation—RC	<u>Residential – Rural Conservation</u>	<u>R-RLC</u>
Resource protection—RP.	<u>Conservation</u>	<u>CON</u>
Local business—LB.	<u>Business – Local</u>	<u>B-L</u>
Local business 1—LB-1.	<u>Business – Local 1</u>	<u>B-L1</u>
Business park—BP.	<u>Business – Park</u>	<u>B-P</u>
Commercial—	<u>C (C-1, C-2, C-3)</u>	
Industrial—	<u>IND</u>	

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1609	Mixed-Use	MU
1610	Badgers Island urban – BI.	<u>Mixed Use – Badgers Island</u> <u>MU-BI</u>
1611	Kittery Foreside – KF.	<u>Mixed Use – Kittery Foreside</u> <u>MU-KF</u>
1612	<u>Transportation – MT</u>	<u>T-MT</u>

1613

1614 Overlay Zones

1615

1616 Shoreland Overlay Zones

1617 Water Body/Wetland Protection Area – 250' OZ-SL-250

1618 Stream Protection Area– 75' OZ-SL-75

1619 Commercial Fisheries/Maritime Uses Overlay Zone OZ-CFMU

1620 Resource Protection Overlay Zone OZ-RP

1621 (~~Ord. 15-08 (part); Ord. 10-97 (part); Ord. 4-97 (part); land use and dev. code § 3.2, 1994)~~)

1622

1623 ~~16-12-3.0303~~ 16-12-3.0303 Zoning map.

1624

1625 A. ~~Zone in~~ District Boundaries. The location and boundaries of the above zones ~~districts~~ are
1626 established as shown on the current official zoning map titled “Town of Kittery Maine Land Use
1627 Zoning Map” ~~of the Town of Kittery,~~ dated 8th of December, 2008, and as may be ~~as may be~~ duly amended
1628 by law. The ~~current official~~ zoning map with all explanatory matter thereon is hereby made part of
1629 this title, and must be kept on file at the ~~town Kittery municipal~~ office. Said zoning map must be
1630 drawn at a scale of not less than one inch equals a thousand feet (1” = 1000’). Zone boundaries
1631 must be clearly delineated, and the map must have a legend indicating the name and symbol for
1632 each zone.

1633

1634 B. Boundary Line Interpretation. Rules. Where uncertainty exists with respect to boundaries of the
1635 various zones ~~districts~~ as shown on the ~~current official~~ zoning map ~~accompanying and made a part~~
1636 ~~of this article~~, the following rules apply:

1637 1. Unless otherwise shown, zone ~~district~~ boundary lines are coincidental with street centerlines
1638 and lot lines. Where zone ~~district~~ boundary lines are designated on the ~~official~~ zoning map those
1639 lines are construed to be the boundary of the zone ~~district~~.

1640 2. Where the zone ~~district~~ boundary lines are not otherwise indicated and where the property has
1641 been or may hereafter be divided into blocks and lots, the zone ~~district~~ boundaries are construed to
1642 be the lot lines, and where the zones ~~districts~~ designated on the map accompanying and made a
1643 part of this ~~code article~~ are bounded approximately by lot lines, the lot lines are construed to be
1644 the boundary of the zones ~~districts~~ unless the boundary lines are otherwise indicated on the ~~official~~
1645 zoning map.

1646 3. Where un-subdivided property lies within two or more districts, the district boundary lines on
1647 the official zoning map are determined by use of the scale appearing on the official zoning map.

1648 (~~Ord. 15-08 (part); land use and dev. code § 3.3, 1994~~).

1649 4. The Planning Board is the final authority as to the boundaries of the Shoreland Overlay Zone
1650 and Resource Protection Overlay Zones.

1651

1652 C. Overlay Zone.

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An overlay zone is a special purpose zone where additional regulations, beyond those set forth in the base zone apply. The regulations of the underlying zone must apply unless specified otherwise in the overlay zone.

D. Zoning Map Amendments to Resource Protection, and Shoreland Overlay Zones. If Zoning Map amendments are adopted that change the Shoreland or Resource Protection Overlay Zones, said amendments also must be approved by the Maine Commissioner of the State Department of Environmental Protection and then made implemented within thirty (30) days of approval.

Article II. Zone Definitions, Uses, Exceptions, Standards

~~16.12.035 — Gambling casinos prohibited in all zoning districts.~~

~~— The construction, renovation, alteration, maintenance and/or operation of a building, structure of any other type of facility for use in whole or in part as a gambling casino is prohibited in all zoning districts within the town of Kittery. No building/regulation activity permit or certificate of occupancy shall be issued for a gambling casino. (Ord. 3-02 (part))~~

16.123.040 Rural residence—RR—Residential – Rural R-RL.

A. Purpose. The purpose of the Residential - Rural Zone is to protect Much of the prevailing rural character of the town and its is rural. It is the intent of this section to protect this natural rural quality from development sprawl by prescribing the most appropriate uses and standards. To this end, the following shall apply.

B. Permitted Uses:-

1. Dwellings or modular homes, exclusive of ~~mobilehome~~ mobile homes;

2. School, hospital, long-term nursing care facility, convalescent care facility, municipal building or use, church, or other institution of educational, religious, philanthropic, fraternal or social nature;

3. Public open space recreational uses;

4. Any agricultural building or use except a sawmill, piggery, or the raising of poultry for commercial purposes;

5. Accessory uses and buildings including minor home occupations;

6. Day care facility;

7. Individual private campsite; and

8. Accessory dwelling units.

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C. Special Exceptions Uses.

1. Shops used in the pursuit of trades including, but not limited to carpenter shops, boat shops and yards, plumbers, etc.;

2. Public utility facilities including substations, pumping stations and sewage treatment facilities;

3. Cemeteries;

4. ~~Mobile home~~ Mobile home parks on sites of at least ten (10) acres subject to the special provisions of Article XIV of Chapter 16.32;

5. Campgrounds and trailer parks;

6. Mineral extraction subject to Chapter 16.32 4.440;

7. Sawmill, piggery, the raising of poultry for commercial purposes;

8. Rooming house;

9. Riding stable, commercial kennel, or veterinary hospital;

10. Recreation activity buildings and grounds operated for profit exclusive of drive-in theaters;

11. Junkyard, including automobile salvage yard;

12. Temporary, intra-family dwelling unit; and

13. Major home occupations as an accessory use.

D. Standards.

1. The design and performance standards of Chapters 16.32 and 16.34 must be met. shall be observed.

2. The following space standards ~~shall~~ apply:

Minimum land area per dwelling unit 40,000 square feet

Minimum lot size 40,000 square feet

Minimum street frontage 150 feet

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1743 Minimum front yard 40 feet

1744 _____

1745 Maximum building coverage 15 percent

1746 _____

1747 Minimum rear and side yards 20 feet*

1748

1749 _____

1750 * Buildings higher than 40 actual feet ~~shall~~are to have side and rear yards not less than 50
1751 percent of building height.

1752

1753 _____

1754 Maximum building height 35 feet

1755 _____

1756 Minimum distances between principal buildings on the same lot ~~shall be~~is the height equivalent to
1757 the taller building.

1758 _____

1759 Minimum setback from steams, water bodies and wetlands.....in accordance with
1760 ~~Table 16.28~~Table 16.34
1761 ~~set out at the end of Ch.~~
1762 ~~16.28~~Ch. 16.34, and
1763 ~~Section 16.32.490(N)~~
1764 Section 16.34.490 and
1765 Appendix (N) Fee

1766

1767

1768 Minimum setback from water bodies and wetlands

1769 water dependent uses 0 feet

1770

1771

1772 _____

1773 3. In the case of clustered residential development, the above standards may be modified in
1774 accordance with special provisions of Article XIII of Chapter 16.32, and with the condition that:

1775 _____

1776 a. Sewerage and water ~~shall~~must be provided.

1777 _____

1778 b. A minimum land area of ten (10) acres ~~shall~~must be provided.

1779 _____

1780 c. The maximum net density ~~shall~~may not exceed 1.5 dwelling units per net residential acre.

1781 _____

1782 4. In the case of junkyards and/or automobile salvage yards, the following special standards
1783 ~~shall~~apply, which ~~shall be~~are in addition to the standards and provisions prescribed in Maine
1784 State Statutes, Title 30 M.R.S., ~~§Subchapter 1 and §Sections 24513751—24603760~~, and
1785 any changes thereto:

1786 _____

1787

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Minimum land area 10 acres or 400,000 square feet

Minimum street frontage 600 feet

Minimum distance from street or highway to junk concentration area 200 feet

Other standards as prescribed in Article XV of Chapter 16-32-8.

~~(Ord. 14-08 (part); Ord. 15-06 § 34; Ord. 8-97 § 32 (part); Ord. 9-96 § 38 (part); Ord. 8-96 (part); Ord. 1-95 (part); land use and dev. code § 3.4.1, 1994)~~

16.423.050 Suburban residential—SR. Residential – Suburban R-S,

~~The suburban residential district includes the area adjacent to the Piscataqua River west of the Route 1 bypass, the area around Martin Road, and the Stevenson Road area north of Route 236. For the exact boundaries of the district, refer to the zoning map of the town of Kittery, the official shoreland zoning map, and Section 16.12-3.0303 of the land use and development code.~~

A. Purpose. To provide areas adjacent to the developed urban areas of Kittery for future residential growth consistent with the availability of public utilities. To this end, the following apply.

B. Permitted Uses:

1. Dwellings in a single-family, duplex, and multi-unit residential configuration with not more than four units per building and ~~mobile home~~ mobile homes;

2. School or educational facility (including nursery schools), eldercare facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building or use, church; or other institution of educational, religious, philanthropic, fraternal, political, or social nature which is not used for residential occupancy. Any single listed use may not occupy more than five thousand (5,000) square feet of floor area;

3. Public open space recreational uses;

4. Any agricultural building or use except a sawmill, piggery, or the raising of poultry for commercial purposes;

5. Accessory uses and buildings including minor home occupations;

6. Day care facility;

7. Elderly day care facility; and

8. Accessory dwelling units.

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C. Special Exceptions ~~Uses~~:

1. Rooming house;

2. Public utility facilities including substations, pumping stations and sewage treatment facilities;

3. Cemeteries;

4. Mineral extraction subject to the performance standards of this title;

5. Convenience store, neighborhood grocery facilities excluding sale of gasoline;

6. Temporary, intra-family dwelling unit;

7. Major home occupations as an accessory use;

8. Any use listed in subsection (B)(2) (Permitted Uses) of this section that occupies more than five thousand (5,000) square feet of floor area; and

9. Dwellings in a multi-unit residential configuration with five to twelve (12) units per building.

D. Prohibited Uses. Any use not listed as a permitted use or a special exception is prohibited in the zoned district.

E. Standards.

1. Design and Performance Standards. The design and performance standards of Chapters 16.32 and 16.34 must be met, ~~including the shoreland zoning provisions of Section 16.32.490 must be observed where applicable.~~ The Design Handbook provides examples of appropriate design for nonresidential and multi-unit residential projects.

2. Dimensional Standards. The following space standards apply:

Minimum land area per dwelling unit

—without public sewage disposal 40,000 square feet

—with public sewage disposal 30,000 square feet unless reduced in accordance

with Note A

Minimum lot size

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1875 —without public sewage disposal 40,000 square feet
1876 —with public sewage disposal 30,000 square feet unless
1877 reduced in accordance
1878 with Note A
1879 _____
1880 Minimum street frontage 150 feet unless reduced
1881 in accordance with
1882 Note A
1883 _____
1884 Minimum front yard 40 feet
1885 _____
1886 Maximum building coverage 20 percent
1887 _____
1888 Minimum rear and side yards 15 feet*
1889 _____
1890 _____
1891 * Buildings higher than 40 actual feet ~~shall~~ must have side and rear yards not less than 50
1892 percent of the building height.
1893 _____
1894 _____
1895 Maximum building height 35 feet
1896 _____
1897 Minimum distances between principal buildings on the same lot ~~shall be~~ is the height equivalent to
1898 the taller building.
1899 _____
1900 Minimum setback from steams, water bodies and wetlands.....in accordance with
1901 ~~Table 16.28~~ Table 16.34
1902 ~~set out at the end of Ch.~~
1903 ~~16.28~~ Ch. 16.34, and
1904 ~~Section 16.32.490(N)~~
1905 Section 16.34.490 and
1906 Appendix (N) Fee
1907 _____
1908 Minimum setback from water bodies and
1909 wetlands for water-dependent uses 0 feet
1910

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Note A: The required minimum land area per dwelling unit and/or minimum lot size for residential uses that are served by public sewage disposal and that are located outside of areas subject to shoreland zoning may be less than thirty thousand (30,000) square feet per lot/unit if the established average density of development in the immediate area of the use as determined below is less than thirty thousand (30,000) square feet. If the average of the lot sizes and/or land area per dwelling unit of the developed residential lots that are located on the same street and within five hundred (500) feet of the parcel is less than thirty thousand (30,000) square feet, the required minimum lot size or required minimum land area per dwelling unit ~~is~~ shall be the calculated average average lot size or average land area per dwelling unit but not less than twenty thousand (20,000) square feet. If the required minimum lot size is reduced, the required minimum street frontage for new residential uses served by public sewerage may also be reduced to the average of the lot frontage of existing developed residential lots that are located on the same street and within five hundred (500) feet of the parcel but in no case to less than one hundred (100) feet.

3. Clustered Residential Developments. In the case of clustered residential developments, the above standards may be modified in accordance with the special provisions of Article XIII of Chapter 16.32 and with the conditions that:

a. Public or community sewerage and water must be provided.

b. A minimum land area of ten (10) acres must be provided, except as otherwise prescribed in this section.

c. The maximum net density must not exceed two dwelling units per net residential acre.

4. ~~Mobilehome~~Mobile homes. ~~Mobilehome~~Mobile homes must meet the standards of Article XVI of Chapter 16.32, 8,
(~~Ord. 14-08 (part); Ord. 15-06 § 5; Ord. 12-06; Ord. 8-97 § 2 (part); Ord. 4-97 (part); Ord. 8-96 (part); Ord. 1-95 (part); land use and dev. code § 3.4.2, 1994)~~)

~~16.12.3.055~~ Residential - Kittery Point Village—R-KPV.

The Kittery Point Village district encompasses the Kittery Point neighborhood extending from Spruce Creek and Crockett's Brook eastward to the easterly side of Cutts Island Lane. For the exact boundaries of the district, refer to the zoning map of the town of Kittery, the official shoreland zoning map, and Section ~~16.12.3.0303~~ 16.12.3.0303 of the land use and development code.

A. Purpose. To preserve the established character and development pattern of the Kittery Point neighborhood while assuring that any new development is consistent with this historical development pattern and is environmentally suitable. To this end, the following apply.

B. Permitted Uses:

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- 1955 1. Dwellings, excluding ~~mobile home~~ mobile homes, in a single-family, duplex, and multi-unit
1956 residential configuration with not more than four units per building;
1957 _____
- 1958 2. School or educational facility (including nursery schools), municipal, county, or state
1959 building or use, church; or other institution of educational, religious, philanthropic, fraternal,
1960 political, or social nature which is not used for residential occupancy. Any single listed use may not
1961 occupy more than five thousand (5,000) square feet of floor area;
1962 _____
- 1963 3. Public open space recreational uses;
1964 _____
- 1965 4. Any agricultural building or use except a sawmill, piggery, or the raising of poultry for
1966 commercial purposes;
1967 _____
- 1968 5. Accessory uses and buildings including minor home occupations;
1969 _____
- 1970 6. Day care facility; and
1971 _____
- 1972 7. Accessory dwelling units.
1973 _____
- 1974 C. Special Exceptions Uses:-
1975 _____
- 1976 1. Rooming house;
1977 _____
- 1978 2. Any use listed in subsection (B)(2) of this section (Permitted Uses) that occupies more than
1979 five thousand (5,000) square feet of floor area;
1980 _____
- 1981 3. Public utility facilities including substations, pumping stations and sewage treatment
1982 facilities;
1983 _____
- 1984 4. Cemeteries;
1985 _____
- 1986 5. Convenience store, neighborhood grocery facilities excluding sale of gasoline;
1987 _____
- 1988 6. Temporary, intra-family dwelling unit;
1989 _____
- 1990 7. Major home occupations as an accessory use; and
1991 _____
- 1992 8. The reuse of a designated historic building, in nonresidential use as of the effective date of
1993 this provision, as an art studio/gallery, museum, or business and professional office subject to
1994 standards B through L for a minor home occupation as set forth in Section 16-32.8.1170.
1995 _____
- 1996 D. Prohibited Uses. Any use not listed as a permitted use or a special exception is prohibited
1997 in the district.
1998 _____
- 1999 E. Standards.

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2000 _____

2001 1. Design and Performance Standards. The design and performance standards of Chapters

2002 ~~16.32 and 16.34 must be met, including the shoreland zoning provisions of Section 16.32.490~~

2003 ~~must be observed where applicable.~~ The Design Handbook provides examples of appropriate

2004 design for nonresidential and multi-unit residential projects.

2005 _____

2006 2. Dimensional Standards. The following space standards apply:

2007 _____

2008 _____

2009 Minimum land area per dwelling unit 40,000 square feet

2010 _____

2011 Minimum lot size 40,000 square feet

2012 _____

2013 Minimum street frontage 150 feet unless reduced

2014 in accordance with Note A

2015 _____

2016 Note A: The required minimum street frontage for a new lot may be less than one hundred fifty

2017 (150) feet if the established pattern of street frontage in the immediate area of the lot as

2018 determined below is less than one hundred fifty (150) feet per lot. The required minimum street

2019 frontage in this case is the average of the street frontage of existing developed residential lots that

2020 are located on the same street and within five hundred (500) feet of the parcel, but in no case, less

2021 than one hundred (100) feet.

2022 _____

2023 Minimum front yard 40 feet

2024 _____

2025 Maximum building coverage 20 percent

2026 _____

2027 Minimum rear and side yards 15 feet*

2028 _____

2029 _____

2030 * Buildings higher than 40 actual feet ~~shall~~must have side and rear yards not less than 50

2031 percent of the building height.

2032 _____

2033 _____

2034 Maximum building height 35 feet

2035 _____

2036 Minimum distances between principal buildings on the same lot ~~shall be~~is the height equivalent to

2037 the taller building.

2038 _____

2039 Minimum setback from streams, water bodies and wetlands.....in accordance with

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~~Table 16.28~~ Table 16.34
~~set out at the end of Ch.~~
~~16.28~~ Ch. 16.34, and
~~Section 16.32.490(N)~~
Section 16.34.490 and
Appendix (N) Fee

Minimum setback from water bodies
and wetlands for water dependent uses 0 feet

3. Clustered Residential Developments. In the case of clustered residential developments, the above standards may be modified in accordance with the special provisions of Article XIII of Chapter 16.32 and with the conditions that:

a. Public or community sewerage and water must be provided.

b. A minimum land area of ten (10) acres must be provided, except as otherwise prescribed in this section.

c. The maximum density must not exceed the density allowed by applying the minimum land area per dwelling unit requirements of Standard E.2. (~~Ord. 14-08 (part); Ord. 10-06~~)

~~16.12.3.0606 Urban residential zone—UR~~ Residential – Urban R-U.

A. Purpose. To preserve the physical, aesthetic and social quality of Kittery’s urban area and, consistent with this ~~stated~~ goal, to provide therein for the location of a variety of residential uses in accordance with the standards of this title. To this end, the following ~~shall~~ apply.

B. Permitted Uses.

1. Dwellings and manufactured housing;

2. Public open space recreational uses;

3. School (including day nursery), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature, which is not used for residential occupancy;

4. Accessory uses and buildings including minor home occupations;

5. Day care facility;

6. Conference center; and

7. Accessory dwelling units.

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- 2085 _____
2086 C. Special Exceptions Uses:
2087 _____
2088 1. Rooming house, apartment building, or elderly housing;
2089 _____
2090 2. Professional offices;
2091 _____
2092 3. Funeral homes;
2093 _____
2094 4. Art galleries;
2095 _____
2096 5. Public and private recreational uses exclusive of drive-in theaters;
2097 _____
2098 6. Public utility facilities including substations, pumping stations, and sewage treatment
2099 facilities;
2100 _____
2101 7. Inn;
2102 _____
2103 8. Temporary, intra-family dwelling unit; and
2104 _____
2105 9. Major home occupations as an accessory use.
2106 _____
2107 D. Standards.
2108 _____
2109 1. The design and performance standards of Chapter 16.32 ~~shall~~ must be observed.
2110 _____
2111 2. The following ~~shall~~ apply:
2112 _____
2113 _____
2114 Minimum land area per dwelling unit 20,000 square feet
2115 _____
2116 Minimum lot size 20,000 square feet
2117 _____
2118 Minimum street frontage 100 feet
2119 _____
2120 Minimum front yard, all buildings 30 feet
2121 _____
2122 Minimum rear and side yards, all buildings 15 feet*
2123 _____
2124 _____
2125 * Buildings higher than 40 actual feet ~~shall~~ must have side and rear yards not less than 50
2126 percent of building height.
2127 _____
2128 _____
2129 Maximum building height 35 feet

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- 2130 _____
- 2131 Minimum distances between principal buildings on the same lot ~~shall be~~ the height equivalent to
- 2132 the taller building.
- 2133 _____
- 2134 Maximum building coverage 20 percent
- 2135 _____
- 2136 Minimum setback from steams, water bodies and wetlands.....in accordance with
- 2137 ~~Table 16.28~~Table 16.34
- 2138 ~~set out at the end of Ch.~~
- 2139 ~~16.28~~Ch. 16.34, and
- 2140 ~~Section 16.32.490(N)~~
- 2141 Section 16.34.490 and
- 2142 Appendix (N) Fee
- 2143 _____
- 2144 Minimum setback from water bodies and wetlands:
- 2145 water-dependent uses 0 feet
- 2146 _____
- 2147 _____
- 2148 3. In the case of clustered residential developments, the above standards may be modified in
- 2149 accordance with the special provisions of Article XIII of Chapter 16.32, and with the conditions
- 2150 that:
- 2151 _____
- 2152 a. Sewerage and water ~~shall~~must be provided.
- 2153 _____
- 2154 b. A minimum land area of five acres ~~shall~~must be provided.
- 2155 _____
- 2156 c. The maximum net density ~~shall~~may not exceed three dwelling units per net residential
- 2157 acre.
- 2158 _____
- 2159 4. In the case of housing for the elderly, the above standards may be modified in accordance
- 2160 with the special provisions of Article XIII of Chapter 16.32, and with the condition that:
- 2161 _____
- 2162 a. Municipal sewerage and water shall be provided.
- 2163 _____
- 2164 b. A minimum land area of three acres ~~shall~~must be provided.
- 2165 _____
- 2166 c. The maximum net density ~~shall~~may not exceed four dwelling units per net residential acre.
- 2167 In no event ~~shall~~may the planning board authorize a departure which increases the total number
- 2168 of dwelling units greater than that specified under the applicable zoning ordinance.
- 2169 _____
- 2170 d. A single bedroom unit ~~shall~~may not be less than five hundred fifty (550) square feet and a
- 2171 two-bedroom unit ~~shall not be~~ less than six hundred fifty (650) square feet.
- 2172 _____
- 2173 5. Modular housing to meet standards of Article XVI of Chapter 16.32..8 and Chapter 16.34..

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~~(Ord. 14-08 (part); Ord. 3a-07 (part); Ord. 15-06 § 6; Ord. 8-97 § 2 (part); Ord. 4-97 (part); Ord. 8-96 (part); Ord. 1-95 (part); land use and dev. code § 3.4.3, 1994)~~

16.12.3.0707 Residential - Village residence —R-VR.

~~The village residential district is the Admiralty Village neighborhood. For the exact boundaries of the district, refer to the zoning map of the town of Kittery, the official shoreland zoning map, and Section 16.12.3.0303 of the land use and development code.~~

A. Purpose. To recognize the special nature of the Admiralty Village neighborhood as a densely developed residential zone ~~district~~ composed primarily of affordable housing on small lots serviced by sewer and water and to encourage reinvestment in maintaining and upgrading the neighborhood. Consistent with this ~~stated~~ goal, the zone ~~district~~ provides for uses that reinforce the residential character and establish building standards that allow improvements on typical lots to enhance the residential quality of life in the neighborhood. To this end, the following will apply:

B. Permitted Uses:

1. Single and duplex family dwellings and modular homes, exclusive of ~~mobile home~~ mobile homes;

2. Public recreation;

3. Municipal, county, or state building or use;

4. Day care or nursery school facility limited to twelve (12) or fewer persons in care, in conformance with the standards for a minor home occupation (see Section 16.32.8.1170);

5. Accessory buildings and structures including minor home occupations;

~~6. School, educational facility, or hospital that occupies less than five thousand (5,000) square feet of floor area;~~

~~7.~~ 6. Accessory dwelling units.

C. Special Exceptions Uses:

1. Public utility facilities, including substations, pumping stations, and sewage treatment facilities;

2. Major home occupations as an accessory use;

3. Day care or nursery school facility for thirteen (13) or more persons in care, in conformance with the standards for a major home occupation (see Section 16.32.8.1180);

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4. ~~Multi-unit residential dwellings;~~

~~5. School, educational facility, or hospital that occupies five thousand (5,000) to ten thousand (10,000) square feet of floor area;~~

~~6. Eldercare facility, nursing, convalescent home, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature which is not used for residential occupancy. Any individual use may not occupy more than ten thousand (10,000) square feet of floor area.~~

D. Prohibited Uses. Any use not listed as a permitted use or a special exception is prohibited in the ~~district~~zone.

E. Standards.

1. All development and the use of land in the ~~VR district~~ R-V zone must ~~conform to meet~~ the following standards. In addition, the design and performance standards of Chapters 16.32 and 16.34 must be ~~met~~ observed. The Design Handbook provides examples of appropriate design for nonresidential and multi-unit residential projects.

2. The following space standards apply:

Minimum land area per dwelling unit 4,000 square feet

Minimum lot size 6,000 square feet

Minimum street frontage 50 feet

Minimum front yard 15 feet

Minimum rear yard, dwellings/structures 15 feet

Minimum side yard, dwellings/structures 10 feet

Minimum rear and side yards for accessory buildings/structures that are accessory to a residential use and located at least four feet behind the predominant rear line of the principal building 3 feet

Maximum structure coverage 40 percent

Maximum height of principal dwellings/structures 35 feet

Maximum height of accessory buildings/structures located closer than ten feet to a lot line 15 feet

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2264 Minimum setback from steams, water bodies and wetlands.....in accordance with
2265 ~~Table 16.28~~ Table 16.34
2266 ~~set out at the end of Ch.~~
2267 ~~16.28~~ Ch. 16.34, and
2268 Section ~~16.32.490(N)~~
2269 Section 16.34.490 and
2270 Appendix (N) Fee
2271 _____
2272 Minimum setback from water bodies and wetlands:
2273 water-dependent uses 0 feet
2274
2275 (~~Ord. 14-08 (part); Ord. 24-05; Ord. 8-97 § 32 (part); Ord. 2-97 (part))~~)
2276
2277 ~~16.42.3.0808~~ 16.42.3.0808 Residential - Rural conservation—R-RLC.
2278 _____
2279 A. Purpose. To conserve and protect land areas of the town which by their location and
2280 character require special measures to ensure low density development. To this end, the following
2281 ~~shall~~ apply:
2282 _____
2283 B. Permitted Uses:-
2284 _____
2285 1. Dwellings or modular homes, exclusive of ~~mobile home~~ mobile homes;
2286 _____
2287 2. Any agricultural building or use except sawmill, piggery, or the raising of poultry for
2288 commercial purposes;
2289 _____
2290 3. Timber harvesting;
2291 _____
2292 4. Public recreation;
2293 _____
2294 5. Accessory uses and buildings including minor home occupations; and
2295 _____
2296 6. Accessory dwelling units.
2297 _____
2298 C. Special Exceptions Uses:-
2299 _____
2300 1. School, municipal building or use; or any other institution of educational, religious,
2301 philanthropic, fraternal, or social nature;
2302 _____
2303 2. Public and private open space recreational uses exclusive of drive-in theaters;
2304 _____
2305 3. Major home occupations as an accessory use;
2306 _____
2307 4. Public utility facilities including substations, pumping stations, and sewage treatment
2308 facilities;

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2309 _____
2310 5. Cemeteries;
2311 _____
2312 6. Day care facility;
2313 _____
2314 7. Temporary, intra-family dwelling unit.
2315 _____
2316 D. Standards.
2317 _____
2318 1. The design and performance standards of Chapters 16.32 ~~and 16.32 must be met.~~ shall be
2319 ~~observed.~~
2320 _____
2321 2. The following space standards ~~shall~~ apply:
2322 _____
2323 _____
2324 Minimum land area per dwelling unit 80,000 square feet
2325 _____
2326 Minimum lot size 80,000 square feet
2327 _____
2328 Minimum street frontage 200 feet
2329 _____
2330 Minimum front yard 40 feet
2331 _____
2332 Maximum building coverage 6 percent
2333 _____
2334 Minimum rear and side yards 20 feet*
2335 _____
2336 _____
2337 * Buildings higher than 40 actual feet ~~shall~~ must have side and rear yards not less than 50
2338 percent of building height.
2339 _____
2340 _____
2341 Maximum building height 35 feet
2342 _____
2343 Minimum distances between principal buildings on the same lot ~~shall be~~ is the height equivalent to
2344 the taller building.
2345 _____
2346 Minimum setback from steams, water bodies and wetlands.....in accordance with
2347 ~~Table 16.28~~ Table 16.34
2348 ~~set out at the end of Ch.~~
2349 ~~16.28~~ Ch. 16.34, and
2350 ~~Section 16.32.490(N)~~
2351 Section 16.34.490 and
2352 Appendix (N) Fee
2353 _____

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- 2397 _____
- 2398 A. ~~_____ Purpose. To further the maintenance of safe and healthful conditions; prevent and control~~
- 2399 ~~potential water pollution sources; protect spawning grounds, fish, aquatic life, bird and other~~
- 2400 ~~wildlife habitat; and conserve shore cover, visual as well as actual point of access to inland and~~
- 2401 ~~coastal waters and natural beauty. To this end, no structures will be permitted except as herein~~
- 2402 ~~defined.~~
- 2403 _____
- 2404 B. ~~_____ Permitted and Special Exception Uses. Uses are allowed in accordance with Table~~
- 2405 ~~16.32.8.490, Land Uses in the Shoreland Zone, and the land use standards established in~~
- 2406 ~~shoreland zoning.~~
- 2407 C. ~~_____ Standards.~~
- 2408 _____
- 2409 1. ~~_____ The applicable approvals and land use standards in the shoreland zoning apply to all~~
- 2410 ~~proposed uses in the resource protection district.~~
- 2411 _____
- 2412 2. ~~_____ Dimensional standards such as front, side and rear yards, building coverage, height and~~
- 2413 ~~the like not listed in the shoreland zoning are the same as those of the rural conservation (RC)~~
- 2414 ~~district. (Ord. 2-97 (part); Ord. 9-96 § 7; land use and dev. code § 3.4.5, 1994)~~
- 2415 _____
- 2416 16.12.~~3~~.100 ~~Local business—LB—Business – Local —B-L.~~
- 2417 _____
- 2418 ~~The local business district includes a portion of the Route 1 corridor starting at the northerly~~
- 2419 ~~boundary of the LB-1 district and extending north to and including the traffic circle. It also includes~~
- 2420 ~~the area around the intersection of Old Post and Dennett Roads and extending south on the west~~
- 2421 ~~side of the Old Post Road toward the river, the Lewis Square area of Kittery Point, a small area at~~
- 2422 ~~the intersection of Whipple and Rogers Roads, and a small area at the intersection of Pepperell~~
- 2423 ~~Road and Pepperell Terrace. For the exact boundaries of the district, refer to the zoning map of~~
- 2424 ~~the town of Kittery, the official shoreland zoning map, and Section 16.12.3.0303 of the land use~~
- 2425 ~~and development code.~~
- 2426 _____
- 2427 A. Purpose. To provide local sales, services, and business space within the town.
- 2428 _____
- 2429 B. Permitted Uses.
- 2430 _____
- 2431 1. Dwellings or modular homes, exclusive of ~~mobilehome~~mobile homes;
- 2432 _____
- 2433 2. Public open space recreational uses;
- 2434 _____
- 2435 3. School or educational facility (including nursery schools), day care facility, eldercare facility,
- 2436 hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state
- 2437 building or use, church; or any other institution of educational, religious, philanthropic, fraternal,
- 2438 political or social nature which is not used for residential occupancy;
- 2439 _____
- 2440 4. Accessory uses and buildings including minor or major home occupations;
- 2441 _____

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5. Retail business and service establishments, but excluding those of which the principal activity entails outdoor sales and/or storage and excluding those specifically mentioned under subsection C of this section;

6. Business and professional offices;

7. Mass transit station;

8. Commercial parking lot or parking garage;

9. Restaurant;

10. Art studio or gallery;

11. Convenience store, food store, grocery store;

12. Personal service;

13. Business service;

14. Building materials, but excluding those of which the principal activity entails outdoor sales and/or storage;

15. Garden supply;

16. Conference center;

17. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;

18. Aquaculture; and

19. Accessory dwelling units.

C. Special Exceptions.

1. Motel, hotel, inn, or rooming house;

2. Funeral home;

3. Gasoline sales: (a) not located within one thousand (1,000) feet of an existing station, (b) not located within one thousand (1,000) feet of any private residence, and (c) not located within one hundred fifty (150) feet of any existing structure;

4. Place of public assembly, including theater;

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5. Public utility facilities including substation, pumping stations, and sewage treatment facilities;

6. Apartment building;

7. Temporary, intra-family dwelling unit;

8. Mechanical service; and

9. Residential dwelling units as part of a mixed-use building.

D. Prohibited Uses. Any use not listed as a permitted use or a special exception is prohibited in the ~~district~~zone.

E. Standards.

1. All development and the use of land in the ~~LB district~~B-L zone must ~~conform to~~meet the following standards. ~~The town of Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.32 and 16.34 must be met.~~observed.

a. Parking. One row of parking spaces and a related access drive may be located between the front property line and the front wall of the building extending the full width of the lot. All other parking must be located to the side and/or rear of the building. All new or revised parking must be visually screened through the use of landscaping, earthen berms, and/or fencing from adjacent public streets or residential properties (See the Design Handbook for appropriate examples).

b. Building Design Standards. Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. In general, buildings should be oriented with the front of the building facing the street on which the building is located. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: (1) a "front door" although other provisions for access to the building may be provided, (2) windows, or (3) display cases (See Design Handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

i. Exterior Building Materials and Details. Building materials and details strongly define a project's architectural style and overall character (See Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and

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completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

ii. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the planning board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Roof colors must be muted (See Design Handbook for examples). The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (See Design Handbook for examples of appropriate treatments).

iii. Loading Docks and Overhead Doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

c. Landscaping Standards. To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.32, the following landscaping requirements apply to new and modified existing developments:

i. Landscape Planter Strip. A vegetated landscape planter strip must be provided a minimum of fifteen (15) feet in depth adjacent to the right-of-way of all public roads. The planning board may reduce the required depth of the landscape planter strip if a sidewalk is provided in front of the parcel and the area between the front property line and the front wall of the building will be designed and used as a pedestrian space. The landscape planter strip must include the following landscape elements:

(A) Ground Cover. The entire landscape planter must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

(B) Streetside Trees. A minimum of one street tree must be planted for each twenty-five (25) feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (See Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species must be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

(C) Special Situations.

(1) Expansions of less than one thousand (1,000) square feet to existing uses are exempt from the landscaping standard of this subsection.

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(2) Depth of Landscape Planter Strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building, or necessary vehicle circulation, the depth may be narrowed by the planning board to the minimum extent necessary to achieve the objective of the proposed project, provided that shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

(3) Additions and Changes in Use. For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (See list of street trees in Design Handbook) is required to be planted for every one thousand (1,000) square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building, or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore the planning board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

ii. Outdoor Service and Storage Areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and shall be visually buffered by fencing, landscaping, and/or other treatments (See Design Handbook for examples of appropriate buffering).

d. Traffic and Circulation Standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the planning board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the planning board determines that such a route is needed for adequate pedestrian safety and movement (See Design Handbook for appropriate examples).

e. Open Space Standards. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams, and setbacks. Fifteen percent (15%) of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to ten percent (10%) of each lot that is less than forty thousand (40,000) square feet in size.

2. The following space standards apply:

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2621 Minimum land area per dwelling unit
2622 when all floors are residential 20,000 square feet if
2623 served by on-site sewage disposal or
2624 8,000 square feet if served by
2625 the public sewerage system*
2626 _____

2627 Minimum land area per dwelling unit when the
2628 entire first floor is used for nonresidential uses 20,000 square feet if
2629 served by on-site sewage
2630 disposal or 4,000 square feet
2631 if served by the public
2632 sewerage system
2633 _____

2634 Minimum lot size None*
2635 _____

2636 Minimum street frontage None*
2637 _____

2638 Minimum front yard 15 feet*
2639 _____

2640 Maximum front setback of the principal building 60 feet
2641 _____

2642 Minimum rear and side yards 10 feet*
2643 _____

2644 Except as otherwise required by the buffer provisions of this title, and except where the
2645 side and/or rear yards abut a residential district or use, in which case a minimum of 15 feet or 50
2646 percent of the building height shall be required.
2647 _____

2648 Maximum building height 40 feet*
2649 _____

2650 Minimum setback from streams, water bodies and wetlands.....in accordance with
2651 ~~Table 16.28~~ Table 16.34
2652 ~~set out at the end of Ch.~~
2653 ~~16.28~~ Ch. 16.34, and
2654 ~~Section 16.32.490(N)~~
2655 Section 16.34.490 and
2656 Appendix (N) Fee
2657 _____

2658 Maximum building and outdoor stored material coverage None, except that
2659 side, rear and front
2660 yards ~~shall~~ must be
2661 maintained
2662 _____

2663 Minimum setback from water bodies and wetlands:
2664 water-dependent uses 0 feet
2665 _____

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* Except that space standards for single and two-family residential uses are the same as for those of the urban residential district.

~~(Ord. 14-08 (part); Ord. 15-06 § 57; Ord. 22-05: Ord. 8-97 §§ 52 (part), 3 (part); Ord. 2-97 (part); Ord. 9-96 § 58 (part); Ord. 8-96 (part); Ord. 1-95 (part); land use and dev. code § 3.4.6, 1994)~~

~~16.12-.3.101 Business – Local 1 —B-L1. Local business 1—LB-1.~~

~~The local business—1 district includes the portion of the Route 1 corridor extending northerly from Government Street to approximately one thousand three hundred (1,300) feet north of the railroad tracks near the intersection of Walker Street and Route 1 including an extension westerly along Government Street to the vicinity of the intersection with Walker Street, and the Post Office Square area. For the exact boundaries of the district, refer to the zoning map of the town of Kittery, the official shoreland zoning map, and Section 16.12-.3.0303 of the land use and development code.~~

A. Purpose. To encourage a smart growth/urban design pattern that will serve as a focal point for the provision of local sales, urban residences, services and business space. The goal of this section is to create an attractive, functional, and vibrant pedestrian-scaled neighborhood supporting a mix of commercial and residential uses. This type of development reflects a traditional New England pattern of building where commercial uses are located on the first floor and housing on the upper floors.

B. Permitted Uses:-

1. Dwellings or modular homes, exclusive of ~~mobilehome~~ mobile homes;

2. Apartments;

3. Public open space recreational uses;

4. Inn;

5. School or educational facility (including nursery schools), day care facility, eldercare facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political or social nature which is not used for residential occupancy;

6. Accessory uses and buildings including minor or major home occupations;

7. Retail business and service establishments excluding those of which the principal activity entails outdoor sales and/or storage and excluding those specifically mentioned under subsection C of this section;

8. Business and professional offices;

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- 2711 _____
- 2712 9. Mass transit station;
- 2713 _____
- 2714 10. Commercial parking lot or parking garage;
- 2715 _____
- 2716 11. Restaurant;
- 2717 _____
- 2718 12. Art studio or gallery;
- 2719 _____
- 2720 13. Convenience store, food store, grocery store;
- 2721 _____
- 2722 14. Personal service;
- 2723 _____
- 2724 15. Business service;
- 2725 _____
- 2726 16. Building materials but excluding those of which the principal activity entails outdoor sales
- 2727 and/or storage;
- 2728 _____
- 2729 17. Garden supply;
- 2730 _____
- 2731 18. Conference center; and
- 2732 _____
- 2733 19. Accessory dwelling units.
- 2734 _____
- 2735 C. Special Exceptions Uses;
- 2736 _____
- 2737 1. Motel, hotel, rooming house;
- 2738 _____
- 2739 2. Funeral home;
- 2740 _____
- 2741 3. Gasoline sales: (a) not located within one thousand (1,000) feet of an existing station, (b)
- 2742 not located within one thousand (1,000) feet of any private residence, and (c) not located within
- 2743 one hundred fifty (150) feet of any existing structure;
- 2744 _____
- 2745 4. Place of public assembly, including theater;
- 2746 _____
- 2747 5. Public utility facilities including substation, pumping stations, and sewage treatment
- 2748 facilities;
- 2749 _____
- 2750 6. Farmer's market;
- 2751 _____
- 2752 7. Temporary, intra-family dwelling unit; and
- 2753 _____
- 2754 8. Mechanical service.
- 2755 _____

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D. Prohibited Uses. Any use not listed as a permitted use or a special exception is prohibited in the zone~~district~~.

E. Standards.

1. All development and the use of land in the B-L-1 zone ~~LB-1 district~~ must ~~conform to~~ meet the following standards. ~~The town of Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.32 and 16.34 must be met.~~~~observed~~.

a. Parking.

i. Parking must be on the side or backyard;

ii. Shared access must be provided where feasible;

iii. New or revised parking must be visually screened through the use of landscaping, earthen berms, and/or fencing from adjacent public streets or residential properties (See the Design Handbook for appropriate examples).

b. Building Design Standards. Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. In general, buildings should be oriented to the street with the front of the building facing the street. Architectural design and structure location must reinforce the human scale and pedestrian nature of the neighborhood by using orientation and building massing, exterior building materials, and roofing as set forth below. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: (1) a "front door" although other provisions for access to the building may be provided, (2) windows, or (3) display cases (See Design Handbook for examples of acceptable materials and designs). Main entries should be clearly visible from the street and provide adequate cover from the weather. Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

i. Exterior Building Materials and Details. Building materials and details strongly define a project's architectural style and overall character (See Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

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ii. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the planning board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Roof colors must be muted (See Design Handbook for examples). The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (See Design Handbook for examples of appropriate treatments).

iii. Loading Docks and Overhead Doors. Loading docks and overhead doors must be located on the side or rear of the building and must be screened from view from adjacent properties in residential use.

c. Landscaping/Site Improvements. To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.32, the following landscaping requirements apply to new and modified existing developments:

i. Fifteen percent (15%) of site area must be landscaped;

ii. Outdoor spaces must be created to reinforce commercial activities and pedestrian-friendly access. Outdoor spaces are encouraged throughout the site with special attention along the sidewalk and street. Architectural features such as decorative pavers, planters, and benches are encouraged in the creation of these spaces;

iii. The space between the roadway and any buildings must be attractively landscaped using trees, flowers, shrubs, fencing or stone walls to reinforce the site's unique character and building design;

iv. A buffer between commercial and residential zones must be established and be landscaped with a visually pleasing mixed planting type;

v. Solid fencing, berms, and/or stone walls must be used to prevent headlights from shining on abutting residential property. Incorporating flowering vines and other plantings on fences and blank exterior walls is encouraged;

vi. Provide street trees in a pattern reflecting the existing streetscape. For new buildings, a minimum of one street tree must be planted for each twenty-five (25) feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (See Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species must be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

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For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (See list of street trees in Design Handbook) is required to be planted for every one thousand (1,000) square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building, or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore the planning board may permit the preservation of existing healthy, large, mature trees within developed areas of the site to be substituted for the planting of new trees;

vii. Service and storage areas must be located to the rear of the building and be shielded using plantings and/or fencing. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (See Design Handbook for examples of appropriate buffering);

viii. No storage may be in front of buildings except seasonal sales items;

ix. Lighting and landscape plans must be provided and approved as a part of final plan;

x. Lighting along the street must be of a pedestrian scale utilizing an architectural fixture appropriate to the neighborhood.

d. Traffic and Circulation Standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the planning board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the planning board determines that such a route is needed for adequate pedestrian safety and movement (See Design Handbook for appropriate examples).

e. The following space standards apply:

Minimum land area per dwelling
unit when all floors are residential 8,000 square feet/
dwelling unit

Minimum land area per dwelling unit when the
entire first floor is in nonresidential use 3,500 square feet/
dwelling unit and
requires 1.5 parking
spaces per unit.

Minimum lot size 20,000 square feet

Minimum street frontage per building 50 feet

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2889 _____
2890 Maximum front yard Maximum of 30 feet
2891 _____
2892 This area must be designed to promote a pedestrian public space, which includes, but is
2893 not limited to, landscaping, sidewalks, and sitting areas. Parking and outdoor storage are
2894 prohibited anywhere in the front yard of the structure, except for seasonal sales items.
2895 _____
2896 Minimum rear and side yards 10 feet*
2897 _____
2898 * Except as otherwise required by the buffer provisions of this title, and except where the side
2899 and/or rear yards abut a residential district or use, in which case a minimum of 15 feet, or 50
2900 percent of the building height, whichever is greater, is required.
2901 _____
2902 Maximum building height 40 feet
2903 _____
2904 Maximum building and outdoor stored material
2905 coverage 50 percent
2906 _____
2907 Minimum area dedicated to landscaped area 15 percent
2908 _____
2909 _____
2910 Hours of Operation — Must be noted on the final site plan and are determined by the planning
2911 board on a case-by-case basis. All lighting other than designated security lighting must be
2912 extinguished outside of noted hours of operation.
2913 _____
2914 _____
2915 Minimum setback from streams, water bodies and wetlands.....in accordance with
2916 ~~Table 16.28~~Table 16.34
2917 ~~set out at the end of Ch.~~
2918 ~~16.28~~Ch. 16.34, and
2919 ~~Section 16.32.490(N)~~
2920 Section 16.34.490 and
2921 Appendix (N) Fee
2922 _____
2923 (~~Ord. 14-08 (part); Ord. 15-06 § 3.8; Ord. 23-05; Ord. 9-02)~~
2924 _____
2925 ~~16.42.3.105~~ Business — Ppark — B - P.
2926 _____
2927 ~~The business park (BP) zoning district lies between the northwest right-of-way line of I-95 and the~~
2928 ~~southwest boundary line of the suburban residential (SR) zoning district, said district boundary line~~
2929 ~~being the common property line between parcels known as Map 12 Lot 3-1 and Map 12 Lot 3-2,~~
2930 ~~thence veering slightly towards the north continues in a northeasterly direction along the common~~
2931 ~~property line between parcels known as Map 12 Lot 3-1 and Map 12 Lot 3; said district line~~
2932 ~~continues without deviation until it intersects with the west district line of the five hundred (500) foot~~
2933 ~~wide commercial 2 (C2) zoning district; the business park zoning district lies between the east~~

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~~right-of-way line of Dennett Road and the west district line of the five hundred (500) foot wide commercial 2 (C2) zoning district that parallels Route 236 as shown on the town of Kittery official zoning map as amended on August 8, 2006. See also Section 16.12.3.0303 Zoning map for related criteria.~~

A. Purpose. To encourage investment that promotes development of a high quality park-like setting for both the business and residential communities. Cluster mixed-use development must be used ~~utilized~~ on larger tracts of land where offices, retail sales, services, lodging, open space, housing and light manufacturing space are blended with residential and moderate entertainment to foster general business growth and a sense of community. The intent of cluster mixed-use development is to provide a more efficient use ~~utilization~~ of land than might be obtained through segregated development procedures.

B. Permitted Uses:-

1. The following land uses are permitted for projects that are cluster mixed-use developments:
2. The following land uses are permitted for projects that are not cluster mixed-use developments:

- a. Art studio/gallery;
- b. Building materials and garden supply;
- c. Business and professional offices;
- d. Business services;
- e. Commercial parking lot or parking garage;
- f. Conference center;
- g. Cluster residential development;
- h. Grocery, food store, convenience store, including gas station;
- i. Light industry;
- j. Mass transit station;
- k. Mechanical services, excluding junkyard;
- l. Motel, hotel, rooming house, inn;
- m. Personal service;

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n. Place of public assembly, including theater;

o. Public open space recreational uses, recreational facilities, and selected commercial recreation;

p. Public utility facilities including substations, pumping stations, and sewage treatment facilities;

q. Repair services;

r. Research and development;

s. Restaurant;

t. Retail uses and wholesale businesses excluding used car lots and junkyards;

u. School (including day nursery), university, museum, hospital, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature;

v. Shops in pursuit of trade;

w. Veterinary hospital; and

x. Warehousing and storage.

2. The following land uses are permitted for projects that are not cluster mixed-use developments:

a. Business and professional offices;

b. Accessory uses and buildings; and

c. Business services.

C. Prohibited Uses. Prohibited land use is any use not listed as a permitted use.

D. Standards.

1. The design and performance standards of Chapters 16.32 and 16.34 must be ~~observed met in this district.~~ In addition, all development and the use of land, except for cluster mixed-use development, must ~~conform to meet~~ the following standards:

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a. Parking. All new or revised parking must be visually screened through the use of landscaping, earthen berms, stone retaining walls and/or fencing from adjacent public streets and abutting properties (see the Design Handbook for appropriate examples).

b. Building Design Standards. Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are new England colonial (such as cape cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. The front elevation must contain one or more of the following elements: (i) windows, or (ii) display cases (see design handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques must be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

i. Exterior Building Materials and Details. Building materials and details strongly define a project's architectural style and overall character (see ~~Kittery's~~ the Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

ii. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the planning board's satisfaction that this is not practicable. The board reserves the right to evaluate such on each and all specific proposals. Acceptable roof styles are gabled, gambrel, and hipped roofs. Shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Flat roofs may be considered in context where it can be demonstrated to the planning board's satisfaction that the structure is not obtrusive and where visual impact can be shown to be minimal. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (see ~~Kittery's~~ the Design Handbook for examples of appropriate treatments).

iii. Loading Docks and Overhead Doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

c. Landscaping Standards. To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.32, the following landscaping requirements apply to new and modified existing developments:

i. Landscape Planter Strip. Landscape planter strips, interior and exterior to the project, are encouraged. A minimum of forty (40) feet in depth of vegetated landscape buffer must be provided

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adjacent to all public right-of-way lines that are common to parcel exterior boundary lines and include the following landscape elements:

(A) Ground Cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

(B) Street Side Trees. In the event project development is to be approved based on a development master plan, development standards are to be applied to the land as defined by its perimeter, rather than by the individual lots, tracts and parcels into which the land may be divided.

Development not based on a master development plan must, as a minimum, provide one street tree for each twenty-five (25) feet of street frontage.

The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (see ~~Kittery's~~ the Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be selected from the list of recommended street trees in ~~Kittery's~~ the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

(C) Planter Strip. Shrubs and flowering perennials must be planted at a minimum of fifteen (15) plants per forty (40) linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of recommended materials in ~~Kittery's~~ the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation (see ~~Kittery's~~ the Design Handbook for examples of appropriate treatments).

ii. Outdoor Service and Storage Areas. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (see ~~Kittery's~~ the Design Handbook for examples of appropriate buffering).

d. Traffic and Circulation Standards. Sidewalks and roadways internal to the parcel must provide adequate pedestrian and traffic circulation both internally and externally, and provide safe and sufficient connectivity to the surrounding neighborhoods. (See ~~Kittery's~~ the Design Handbook for appropriate examples).

e. Open Space Standards. Open space must be provided as a percentage of the total parcel area, including freshwater wetlands, water bodies, streams, and setbacks. Twenty-five percent (25%) of each parcel, or individual lot if applicable, must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be situated to create an attractive environment on the site, minimize environmental impacts, and protect significant natural features and resources.

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Where possible:

i. Individual large, healthy trees and areas with mature tree cover will be included in the open space; and

ii. The open space will be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties.

2. Except for cluster mixed-use developments, the following space standards apply.

Minimum land area per dwelling unit 10,000 square feet, with sewer service

Minimum lot size 120,000 square feet

Minimum street frontage 150 feet

Minimum front yard 50 feet

Minimum rear and side yards 30 feet*

* Except as may be required by the buffer provisions of this title, and except where the side and/or rear yards of the proposed nonresidential-use abut a residential district or use, in which case a minimum of forty (40) feet shall be required.

Patios, sheds, parking lots and golf courses must have a minimum setback of 50 feet from streams, water bodies and wetlands.

Maximum building height The maximum building height is forty (40) feet.

Maximum building and outdoor stored material coverage 50%

3. The above standards may be modified in accordance with special provisions of Article XIII of Chapter 16.32 with the condition that development proposed for parcels equal to or greater than seventy (70) acres is subject to Chapter 16.30 and Master Site Development. (~~Ord. 7-08 (part)~~)

~~16.12.3.110 Commercial C(C-1, C-2, C-3).~~

~~The commercial district, which encompasses three sub-districts, extends along Route 1 from the Donnett Road area north to the mixed use district in the vicinity of the Haley Road and west along the Route 236 to the Eliot town line. The district varies in width. For the exact boundaries of the district, refer to the zoning map of the town of Kittery, the official shoreland zoning map, and Section 16.12.3.0303 of the land use and development code.~~

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A. Purpose. To provide general retail sales, services, and business space within the town in locations capable of conveniently serving community-wide and/or regional trade areas, and oriented primarily to automobile access. To reflect the differing character of various parts of the commercial district, it is divided into three sub-districts that are shown on the official zoning map:

- C-1 ~~The~~ Route 1 commercial sub-zone.~~district.~~
- C-2 ~~The~~ Route 236 commercial sub-zone.~~district.~~
- C-3 ~~The~~ Bypass/Old Post Road commercial sub-zone.~~district.~~

Where the standards or requirements for the sub-zones ~~districts~~ vary, the provisions for the sub-zone ~~district~~ in which the parcel is located shall apply.

B. Permitted Uses:-

1. C-1 Permitted Uses. The following uses are permitted uses in the C-1 sub-zone~~district~~:

- a. Public open space recreational uses, recreational facilities, and selected commercial recreation;
- b. School (including nursery school), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature which is not used for residential purposes;
- c. Accessory uses and buildings including minor or major home occupations;
- d. Business and professional offices;
- e. Mass transit station;
- f. Commercial parking lot or parking garage;
- g. Retail uses and wholesale businesses excluding used car lots and junkyards;
- h. Service establishments;
- i. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
- j. Restaurant;
- k. Veterinary hospital;
- l. Motel, hotel, rooming house, inn;

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- 3196 m. Art studio/gallery;
3197 _____
- 3198 n. Grocery, food store, convenience store;
3199 _____
- 3200 o. Day care facility;
3201 _____
- 3202 p. Business service;
3203 _____
- 3204 q. Personal service;
3205 _____
- 3206 r. Building materials and garden supply;
3207 _____
- 3208 s. Conference center; and
3209 _____
- 3210 t. Repair services.
3211 _____
- 3212 u. Accessory dwelling unit.
3213 _____
- 3214 2. C-2 Permitted Uses. The following uses are permitted uses in the C-2 sub-zoned district:
3215 _____
- 3216 a. Public open space recreational uses, recreational facilities, and selected commercial
3217 recreation;
3218 _____
- 3219 b. School (including nursery school), hospital, long-term nursing care facility, convalescent
3220 care facility, municipal or state building or use, church; or any other institution of educational,
3221 religious, philanthropic, fraternal, political, or social nature which is not used for residential
3222 purposes;
3223 _____
- 3224 c. Accessory uses and buildings including minor or major home occupations;
3225 _____
- 3226 d. Business and professional offices;
3227 _____
- 3228 e. Mass transit station;
3229 _____
- 3230 f. Commercial parking lot or parking garage;
3231 _____
- 3232 g. Retail uses and wholesale businesses excluding used car lots and junkyards;
3233 _____
- 3234 h. Service establishments;
3235 _____
- 3236 i. Public utility facilities including substations, pumping stations, and sewage treatment
3237 facilities;
3238 _____
- 3239 j. Restaurant;
3240 _____

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- 3241 k. Veterinary hospital;
3242 _____
- 3243 l. Motel, hotel, rooming house, inn;
3244 _____
- 3245 m. Art studio/gallery;
3246 _____
- 3247 n. Grocery, food store, convenience store;
3248 _____
- 3249 o. Day care facility;
3250 _____
- 3251 p. Business service;
3252 _____
- 3253 q. Personal service;
3254 _____
- 3255 r. Building materials and garden supply;
3256 _____
- 3257 s. Conference center;
3258 _____
- 3259 t. Repair services;
3260 _____
- 3261 u. New motor vehicle sales;
3262 _____
- 3263 v. Boat yard;
3264 _____
- 3265 w. Mechanical services, excluding junkyard;
3266 _____
- 3267 x. Commercial boating and fishing uses and facilities, provided only incidental cleaning and
3268 cooking of seafood occur at the site; and
3269 _____
- 3270 y. Aquaculture.
3271 _____
- 3272 z. Accessory dwelling unit.
3273 _____
- 3274 3. C-3 Permitted Uses. The following uses are permitted uses in the C-3 sub-zoned district:
3275 _____
- 3276 a. Public open space recreational uses, recreational facilities, and selected commercial
3277 recreation;
3278 _____
- 3279 b. School (including nursery school), hospital, eldercare facility, long-term nursing care
3280 facility, convalescent care facility, municipal or state building or use, church; or any other institution
3281 of educational, religious, philanthropic, fraternal, political, or social nature which is not used for
3282 residential purposes;
3283 _____
- 3284 c. Accessory uses and buildings including minor or major home occupations;
3285 _____

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- 3286 d. Business and professional offices;
3287 _____
- 3288 e. Mass transit station;
3289 _____
- 3290 f. Commercial parking lot or parking garage;
3291 _____
- 3292 g. Retail uses and wholesale businesses excluding used car lots and junkyards;
3293 _____
- 3294 h. Service establishments;
3295 _____
- 3296 i. Public utility facilities including substations, pumping stations, and sewage treatment
3297 facilities;
3298 _____
- 3299 j. Restaurant;
3300 _____
- 3301 k. Veterinary hospital;
3302 _____
- 3303 l. Motel, hotel, rooming house, inn;
3304 _____
- 3305 m. Art studio/gallery;
3306 _____
- 3307 n. Grocery, food store, convenience store;
3308 _____
- 3309 o. Day care facility;
3310 _____
- 3311 p. Business service;
3312 _____
- 3313 q. Personal service;
3314 _____
- 3315 r. Building materials and garden supply;
3316 _____
- 3317 s. Conference center;
3318 _____
- 3319 t. Repair services;
3320 _____
- 3321 u. New motor vehicle sales;
3322 _____
- 3323 v. Boat yard;
3324 _____
- 3325 w. Mechanical services, excluding junkyard;
3326 _____
- 3327 x. Commercial boating and fishing uses and facilities, provided only incidental cleaning and
3328 cooking of seafood occur at the site; and
3329 _____
- 3330 y. Aquaculture.

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z. Accessory dwelling unit.

C. Special Exceptions Uses:

1. C-1 Special Exception Uses. The following uses are special exceptions in the C-1 sub-zone: ~~district~~:

a. Used car lot not connected with new car sales;

b. Gasoline sales: (i) not located within one thousand (1,000) feet of an existing station or private residence, and (ii) not located within one hundred fifty (150) feet of an existing structure;

c. Funeral home;

d. Place of assembly, including theater;

e. Transportation terminal excluding truck stops;

f. Warehousing and storage;

g. Mini storage;

h. Research and development;

i. Manufacturing operations that conform ~~with~~ to the provisions of Chapters 16.32 and 16.34;

j. Repair garages not located within one hundred fifty (150) feet of a private dwelling or existing structure;

k. Buildings and structures over forty (40) feet that conform ~~with~~ to the provisions of Chapters 16.32 and 16.34. Buildings and structures higher than forty (40) actual feet from the lowest point of grade to the highest point of the building or structure must have side, rear and front yards of sufficient depth to adequately protect the health, safety and welfare of abutting properties, and which ~~shall~~ may not be less than current standards or

l. Temporary, intra-family dwelling unit;

m. New motor vehicle sales;

n. Mechanical services, excluding junkyard; and

o. Aquaculture.

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2. C-2 Special Exception Uses. The following uses are special exceptions in the C-2 sub-
~~zone; district:~~

a. Used car lot not connected with new car sales;

b. Gasoline sales: (i) not located within one thousand (1,000) feet of an existing station or private residence, and (ii) not located within one hundred fifty (150) feet of an existing structure;

c. Funeral home;

d. Place of assembly, including theater;

e. Transportation terminal excluding truck stops;

f. Warehousing and storage;

g. Mini storage;

h. Research and development;

i. Manufacturing operations that conform ~~with~~to the provisions of Chapters 16.32 and 16.34;

j. Repair garages not located within one hundred fifty (150) feet of a private dwelling or existing structure;

k. Buildings and structures over forty (40) feet that conform ~~with~~to the provisions of Chapters 16.32 and 16.34. Buildings and structures higher than forty (40) actual feet from the lowest point of grade to the highest point of the building or structure must have side, rear and front yards of sufficient depth to adequately protect the health, safety, and welfare of abutting properties, and which ~~shall~~may not be less than current standards or fifty percent (50%) of actual height, whichever is greater;

l. Temporary, intra-family dwelling unit;

m. Commercial greenhouses;

n. Adult entertainment establishment not located within one thousand (1,000) feet of an existing private residence, school or place of worship;

o. Shops in pursuit of trade; and

p. Construction services.

3. C-3 Special Exception Uses. The following uses are special exceptions in the C-3 sub-district:

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- 3420 a. Used car lot not connected with new car sales;
3421 _____
- 3422 b. Gasoline sales if not located within:
3423 (i) ~~not located within~~ one thousand (1,000) feet of an existing station or private residence, and
3424 (ii) ~~not located within~~ one hundred fifty (150) feet of an existing structure;
3425 (iii) Manufacturing operations that conform ~~with~~to the provisions of Chapters 16.32 and 16.34;
3426 _____
- 3427 c. Funeral home;
3428 _____
- 3429 d. Place of assembly, including theater;
3430 _____
- 3431 e. Transportation terminal excluding truck stops;
3432 _____
- 3433 f. Warehousing and storage;
3434 _____
- 3435 g. Mini storage;
3436 _____
- 3437 h. Research and development;
3438 _____
- 3439 i. Manufacturing operations that conform ~~with~~to the provisions of Chapter 16.32;
3440 _____
- 3441 j. Repair garages not located within one hundred fifty (150) feet of a private dwelling or
3442 existing structure;
3443 _____
- 3444 k. Buildings and structures over forty (40) feet that conform ~~with~~to the provisions of Chapters
3445 16.32 and 16.34. Buildings and structures higher than forty (40) actual feet from the lowest point of
3446 grade to the highest point of the building or structure must have side, rear and front yards of
3447 sufficient depth to adequately protect the health, safety and welfare of abutting properties, and
3448 which ~~shall~~may not be less than current standards or
3449 _____
- 3450 l. Temporary, intra-family dwelling unit;
3451 _____
- 3452 m. Commercial greenhouses;
3453 _____
- 3454 n. Adult entertainment establishment not located within one thousand (1,000) feet of an
3455 existing private residence, school or place of worship;
3456 _____
- 3457 o. Shops in pursuit of trade; and
3458 _____
- 3459 p. Construction services.
3460 _____
- 3461 D. Prohibited Uses. Any use not listed as a permitted use or a special exception is prohibited
3462 in the district.
3463 _____
- 3464 E. Standards.

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1. C Zone Standards. All development and the use of land in the C zone district must ~~conform to meet~~ the following standards. The ~~town of~~ Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.32 and 16.34 must be met, observed.

2. C-1 Zone Standards. All development and the use of land within the C-1 sub-zone district must ~~conform to meet~~ the following standards:

a. Parking. All new or revised parking must be visually screened through the use of landscaping, earthen berms, and/or fencing from adjacent public streets or residential properties (See the Design Handbook for appropriate examples).

b. Building Design Standards. Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: (1) a "front door" although other provisions for access to the building may be provided, (2) windows, or (3) display cases (See Design Handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

i. Exterior Building Materials and Details. Building materials and details strongly define a project's architectural style and overall character (See Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

ii. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the planning board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (See Design Handbook for examples of appropriate treatments).

iii. Loading Docks and Overhead Doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

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c. Landscaping Standards. To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.32, the following landscaping requirements apply to new and modified existing developments:

i. Landscape Planter Strip. A vegetated landscape planter strip must be provided a minimum of thirty (30) feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:

(A) Ground Cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

(B) Streetside Trees. A minimum of one street tree must be planted for each twenty-five (25) feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (See Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

(C) Planter Strip. Shrubs and flowering perennials must be planted at a minimum of ten (10) plants per forty (40) linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of recommended materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation (See Design Handbook for examples of appropriate treatments).

(D) Special Situations.

(1) Expansions of less than two thousand (2,000) square feet to existing uses are exempt from the landscaping standard of this subsection.

(2) Depth of Landscape Planter Strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building, or necessary vehicle circulation, the depth may be narrowed by the planning board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

If providing the required landscape planter strip along with other required landscaping and required vegetated areas in and around wetlands would cause the project to exceed the required open space standards, the depth of the landscape planter strip and the front yard may be reduced by the planning board so that the open space standards are not exceeded, but in no case to less than twenty (20) feet for this reason.

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(3) Additions and Changes in Use. For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (See list of recommended street trees in Design Handbook) is required to be planted for every one thousand (1,000) square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building, or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore the planning board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

(4) Residences. Residential additions to existing single and two-family dwellings and proposed single and duplex family dwellings are exempt from the landscaping standards of this subsection.

ii. Outdoor Service and Storage Areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (See Design Handbook for examples of appropriate buffering).

d. Traffic and Circulation Standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the planning board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the planning board determines that such a route is needed for adequate pedestrian safety and movement (See Design Handbook for appropriate examples).

e. Open Space Standards. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams, and setbacks. Twenty-five percent (25%) of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to fifteen percent (15%) of each lot that is less than one hundred thousand (100,000) square feet in size.

Minimum land area per unit for eldercare facilities that are connected to the public sewerage system:

dwelling unit with two or more bedrooms 3,000 square feet

dwelling unit with less than two bedrooms 2,000 square feet

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3600 _____
3601 residential care unit 1,500 square feet
3602 _____
3603 Minimum land area per bed for nursing care and
3604 convalescent care facilities that are connected
3605 to the public sewerage system 1,200 square feet
3606 _____
3607 _____
3608 3. All development and the use of land within the C-2 sub-district must conform to the
3609 following standards:
3610 _____
3611 a. Parking. All new or revised parking must be visually screened through the use of
3612 landscaping, earthen berms, and/or fencing from adjacent public streets or residential properties
3613 (See the Design Handbook for appropriate examples).
3614 _____
3615 b. Building Design Standards. New buildings should ~~conform to~~ meet the general design
3616 principles set forth in the Design Handbook. In general, buildings should be oriented to the street
3617 with the front of the building facing the street. The front or street facade must be designed as the
3618 front of the building. The front elevation must contain one or more of the following elements: (1) a
3619 “front door” although other provisions for access to the building may be provided, (2) windows, or
3620 (3) display cases. A building’s prominent roofs must be pitched a minimum of 4:12 unless
3621 demonstrated to the planning board’s satisfaction that this is not practicable. Acceptable roof
3622 styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as
3623 “stuck on” mansards) are not acceptable as prominent roof forms except as provided above (See
3624 Design Handbook for examples of acceptable designs).
3625 _____
3626 c. Landscaping Standards. To achieve attractive and environmentally sound site design, and
3627 appropriate screening of parking areas, in addition to the landscaping standards contained in
3628 Chapter 16.32, the following landscaping requirements apply to new and modified existing
3629 developments:
3630 _____
3631 i. Landscape Planter Strip. A vegetated landscape planter strip must be provided a minimum
3632 of twenty (20) feet in depth adjacent to the right-of-way of all public roads and include the following
3633 landscape elements:
3634 _____
3635 (A) Ground Cover. The entire landscape planter strip must be vegetated except for approved
3636 driveways, walkways, bikeways, and screened utility equipment.
3637 _____
3638 (B) Streetside Trees. A minimum of one street tree must be planted for each fifty (50) feet of
3639 street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance
3640 the visual quality of the site (See Design Handbook for examples). The trees must be a minimum
3641 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be
3642 selected from the list of recommended street trees in the Design Handbook. Existing large healthy
3643 trees must be preserved if practical and will count toward this requirement.
3644 _____

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(C) Special Situations.

(1) Expansions of less than two thousand (2,000) square feet to existing uses are exempt from the landscaping standard of this subsection.

(2) Depth of Landscape Planter Strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals for parking, display, storage, building, or necessary vehicle circulation, the depth may be narrowed by the planning board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

(3) Additions and Changes in Use. For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (See list of recommended street trees in Design Handbook) is required to be planted for every one thousand (1,000) square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building, or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore the planning board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

(4) Residences. Residential additions to existing single and two-family dwellings and proposed single and duplex family dwellings are exempt from the landscaping standards of this subsection.

ii. Outdoor Service and Storage Areas. No areas for the storage of raw materials, equipment, or finished products other than small areas for the display of samples of products available for sale or rent may be located between the front property line and the front facade of the building. Display areas may not be located within the required landscape planter strip. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (See Design Handbook for examples of appropriate buffering).

d. Traffic and Circulation Standards. Vehicular and pedestrian circulation must ~~conform to~~ meet the general provisions of the Design Handbook.

4. C-3 Zone Standards. All development and the use of land within the C-3 sub-zone district must ~~conform to~~ meet the following standards:

a. Parking. All new or revised parking must be visually screened through the use of landscaping, earthen berms, and/or fencing from adjacent public streets or residential properties (See the Design Handbook for appropriate examples).

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b. Building Design Standards. Kittery's characteristic buildings reflect its historical seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: (1) a "front door" although other provisions for access to the building may be provided, (2) windows, or (3) display cases (See Design Handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and remodeled building projects:

i. Exterior Building Materials and Details. Building materials and details strongly define a project's architectural style and overall character (See Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

ii. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the planning board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (See Design Handbook for examples of appropriate treatments).

iii. Loading Docks and Overhead Doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

c. Landscaping Standards. To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.32, the following landscaping requirements apply to new and modified existing developments:

i. Landscape Planter Strip. A vegetated landscape planter strip must be provided a minimum of fifteen (15) feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:

(A) Ground Cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

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(B) Streetside Trees. A minimum of one street tree must be planted for each fifty (50) feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (See Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

(C) Special Situations.

(1) Expansions of less than one thousand (1,000) square feet to existing uses are exempt from the landscaping standard of this subsection.

(2) Depth of Landscape Planter Strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building, or necessary vehicle circulation, the depth may be narrowed by the planning board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

(3) Additions and Changes in Use. For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (See list of recommended street trees in Design Handbook) is required to be planted for every one thousand (1,000) square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building, or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore the planning board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

ii. Outdoor Service and Storage Areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (See Design Handbook for examples of appropriate buffering).

d. Traffic and Circulation Standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the planning board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the planning board determines that such a route is needed for adequate pedestrian safety and movement (See Design Handbook for appropriate examples).

e. Open Space Standards. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams, and setbacks. Twenty percent (20%) of each lot must be designated as open space. Required open space must be shown on the plan

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with a note dedicating it as “open space.” The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to ten percent (10%) of each lot that is less than forty thousand (40,000) square feet in size.

5. The following space standards apply in the C-1, C-2, and C-3 sub-zones ~~districts~~:

Minimum lot size 40,000 square feet

Minimum street frontage 150 feet

Minimum front yard 50 feet

Minimum rear and side yards 30 feet

Except as may be required by the buffer provisions of this title, and except where the side and/or rear yards of the proposed nonresidential use abut a residential ~~district~~ zone or use, in which case a minimum of forty (40) feet ~~shall be~~ is required.

Maximum building height 40 feet

Minimum setback from steams, water bodies and wetlands.....in accordance with ~~Table 16.28~~ Table 16.34 set out at the end of Ch. 16.28 Ch. 16.34, and Section 16.32.490(N) Section 16.34.490 and Appendix (N) Fee

Maximum building and outdoor stored material coverage 40 percent

Minimum setback from water bodies and wetlands: water-dependent uses 0 feet

~~(Ord. 14-08 (part); Ord. 15-06 §§ 9-12; Ord. 6-05 § 1; Ord. 15-00; Ord. 8-97 §§ 2 (part), 3 (part); Ord. 2-97 (part); Ord. 8-96 (part); Ord. 1-95 (part); Ord. 6-94 (part); land use and dev. code § 3.4.7, 1994)~~

~~16-12-.3.120~~ Industrial IND.

A. Purpose. To provide areas within the town for manufacturing, processing, treatment and research, and to which end all the performance standards set forth in this title ~~shall~~ apply.

B. Permitted Uses:

1. Manufacturing, processing and treatment;

2. Research facilities; and

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3. Accessory uses and buildings including minor or major home occupations.

C. Special Exceptions Uses:

1. Municipal and governmental uses;

2. Public utility facilities including substations, pumping stations, and sewage treatment plants; and

3. Temporary, intra-family dwelling unit.

D. Standards.

1. The design and performance standards of Chapters 16.32 and 16.34 must be met. ~~shall be observed.~~

2. The following space standards ~~shall~~ apply:

Minimum area of lot None

Minimum street frontage None

Minimum front yard ~~50 feet~~ None

Minimum rear and side yards 30 feet except as may be required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential ~~district~~ zone or use, in which case a minimum of 50 feet or 50 percent of the building or outdoor stored material height, whichever is greater, ~~shall be~~ is required.

Maximum building height None

Maximum building coverage None

Minimum setback from streams, water bodies and wetlands _____ in accordance with Table 16.34 at the end of Chapter 16.34, Section 16.34.490, and Appendix (N) Fee.

Minimum setback for water-dependent uses 0 feet

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Note: It is recognized that federal ownership of this zone at the time of enactment of the ordinance codified in this title precludes enforcement of any local regulations.

~~(Ord. 8-97 § 2 (part); Ord. 2-97 (part); Ord. 8-96 (part); Ord. 1-95 (part); land use and dev. code § 3.4.8, 1994)~~

~~16.12.3.130~~ Mixed Use —MU.

~~The mixed use district extends along the Route 1 from the Haley Road area northerly to the York town line and west to the Maine Turnpike and extending one thousand five hundred (1,500) feet deep on the east side of the Route 1. For the exact boundaries of the district, refer to the zoning map of the town of Kittery, the official shoreland zoning map, and Section 16.12.030 of the land use and development code.~~

A. Purpose. To provide opportunities for a mix of office, service, and limited residential and retail uses, to alter the pattern of commercial activity on Route 1, to serve Kittery's needs, and to minimize traffic congestion. A mix of uses on a site is desired and in some cases, required; a continuation of strip development is not encouraged in this district. The mixed use district is recognized as an area of the town intended to accommodate growth.

The purpose of large lot sizes, open space standards, and frontage requirements is to limit the number of access points along U.S. Route 1, to encourage the development of service roads which may serve several developments, and to create development that will retain the predominant rural character of the district. Other objectives are to encourage an orderly and safe traffic flow along U.S. Route 1, pedestrian safety, and an attractive site design enhanced by landscaping, open space, and restrictions on the locations of parking.

B. Permitted Uses:

1. Agricultural uses and practices, except a piggery or the raising of poultry for commercial purposes;

2. Art studio/gallery;

3. Boat yard;

4. Building materials and garden supplies;

5. Business and professional offices;

6. Church or institution of religion;

7. Commercial parking lot or garage;

8. Day care facility;

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- 3914 _____
- 3915 9. Dwellings, limited to the following:
- 3916 _____
- 3917 a. Single-family dwellings on lots of record as of April 1, 2004,
- 3918 _____
- 3919 b. Dwelling units on the upper floors of a mixed-use building that is served by public
- 3920 sewerage;
- 3921 _____
- 3922 10. Funeral home;
- 3923 _____
- 3924 11. Grocery store, food store, convenience store or neighborhood grocery;
- 3925 _____
- 3926 12. Hospital;
- 3927 _____
- 3928 13. Inn;
- 3929 _____
- 3930 14. Institution of education, which is not used for residential or overnight occupancy;
- 3931 _____
- 3932 15. Mass transit station;
- 3933 _____
- 3934 16. Municipal or state building or use;
- 3935 _____
- 3936 17. Convalescent care facility, long-term nursing care facility;
- 3937 _____
- 3938 18. Institution of philanthropic, fraternal, political, or social nature, which is not used for
- 3939 residential or overnight occupancy;
- 3940 _____
- 3941 19. Personal services;
- 3942 _____
- 3943 20. Public open space or recreation;
- 3944 _____
- 3945 21. Restaurant;
- 3946 _____
- 3947 22. Research and development;
- 3948 _____
- 3949 23. Repair service;
- 3950 _____
- 3951 24. Retail use, a single use not to exceed fifty thousand (50,000) square feet in gross floor
- 3952 area;
- 3953 _____
- 3954 25. Selected commercial recreation;
- 3955 _____
- 3956 26. Theater;
- 3957 _____
- 3958 27. Timber harvesting;

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- 3959 _____
3960 28. Veterinary hospital;
3961 _____
3962 29. Accessory buildings and uses including minor or major home occupations;
3963 _____
3964 30. Eldercare facility; and
3965 _____
3966 31. Accessory dwelling units.
3967 _____
3968 C. Special Exceptions Uses;
3969 _____
3970 1. Campground or trailer park;
3971 _____
3972 2. Commercial kennel;
3973 _____
3974 3. Commercial greenhouses;
3975 _____
3976 4. Drive-in theater;
3977 _____
3978 5. Gas service station;
3979 _____
3980 6. Housing for elderly as part of a mixed use project;
3981 _____
3982 7. Industry, light;
3983 _____
3984 8. Mechanical service;
3985 _____
3986 9. Motel or hotel;
3987 _____
3988 10. New motor vehicle sales;
3989 _____
3990 11. Public utility facilities including substations, pumping stations, and sewage treatment
3991 facilities;
3992 _____
3993 12. Repair garage;
3994 _____
3995 13. A single retail use greater than fifty thousand (50,000) square feet in gross floor area and
3996 less than one hundred fifty thousand (150,000) square feet in gross floor area;
3997 _____
3998 14. Shop in pursuit of trades;
3999 _____
4000 15. Transportation terminal;
4001 _____
4002 16. Warehousing/storage;
4003 _____

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17. Wholesale business; and

18. Construction services.

D. Prohibited Uses. Any use not listed as a permitted use or a special exception use is prohibited in the zone ~~district~~.

E. Standards.

1. All development and the use of land in the MU zone ~~district~~ must ~~conform to meet~~ the following standards. ~~The town of Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.32 and 16.34 must be met.~~ observed.

2. Retail Use Limitation. Retail use, including parking areas and other supporting unvegetated areas for retail use, is limited to not more than fifteen percent (15%) of the developable area of any lot or portion of a lot within the mixed use zone ~~district~~. Notwithstanding the provisions of Title 1 M.R.S.A, Section §302, and regardless of the date on which it is approved by the voters, this amendment is effective as of September 30, 1999, and governs any and all applications for permits or approvals required under the land use and development code of the town ~~of Kittery, Maine~~ that were or have been pending before any officer, board or agency of the town ~~of Kittery~~ on or at any time after September 30, 1999.

3. Location and Screening of Parking Areas. All new parking areas must be located at the side of, and/or to the rear of, principal buildings, except that ten (10) or fewer parking spaces may be located closer to the front lot line than a principal building. All new or revised parking must be visually screened from U.S. Route 1, Lewis Road, Cutts Road, and Haley Road through the use of extensive landscaping, earthen berms, and/or fencing (See Design Handbook for examples of acceptable screening).

4. Building Design Standards. Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings should be compatible with Kittery's characteristic styles in form, scale, material, and color. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: (1) a front door" although other provisions for access to the building may be provided, (2) windows, or (3) display cases (See Design Handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and remodeled building projects:

a. Exterior Building Materials and Details. Building materials and details strongly define a project's architectural style and overall character (See Design Handbook for examples of

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acceptable materials, building scale, and designs). “One-sided” schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design.

i. **Predominant Exterior Building Materials.** Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard. Stucco, adobe, sheet metal, standard concrete block, tilt-up concrete panels, plywood or particle board are prohibited as the primary materials.

ii. **Blank Walls.** A wall may not extend for a length of more than fifty (50) linear feet without an architectural feature such as a dormer, pilaster, cornice, corner, window, porch, or visually compatible door to break up the large mass of a featureless wall (See Design Handbook for examples of the appropriate treatment of walls). As an exception, walls with a clapboard facade may extend for a length of up to one hundred (100) feet without such an architectural feature.

iii. **Light Industrial and Boatyard Uses.** Such uses must comply with the above standards only along the front face and extending back one hundred (100) feet along the side walls.

b. **Roofs.** Roofs must meet the following standards:

i. **Form.** A building’s prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the planning board’s satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as “stuck on” mansards) are not acceptable as primary roof forms.

ii. **Color.** Roof colors must be muted (See Design Handbook for examples).

iii. **Rooftop Mechanical and Electrical Equipment.** Rooftops must be free of clutter. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (See Design Handbook for examples of appropriate treatments). Interior-mounted equipment is encouraged. Whenever possible, utility equipment areas must be placed in an obscure location and screened from view.

iv. **Loading Docks and Overhead Doors.** Loading docks and overhead doors must be located on the side or rear of the building and be screened from view from public streets.

5. **Landscaping Standards.** To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.32, the following landscaping requirements apply to new and modified existing developments:

a. **Landscape Planter Strip.** A vegetated landscape planter strip must be provided a minimum of thirty (30) feet wide, a maximum of seventy (70) feet wide, and an average of fifty (50) feet in

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width adjacent to the right-of-way of U.S. Route 1, Cutts Road, Haley Road, and Lewis Road, and thirty (30) feet in depth adjacent to all other roads and include the following landscape elements:

i. Ground Cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

ii. Streetside Trees. A minimum of one street tree must be planted for each twenty-five (25) feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (See Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

iii. Planter Strip. Shrubs and flowering perennials must be planted at a minimum of ten (10) plants per forty (40) linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of approved materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation (See Design Handbook for examples of appropriate treatments).

iv. Special Situations.

(A) Expansions of less than five hundred (500) square feet to existing uses are exempt from the landscaping standard of this subsection.

(B) Depth of Landscape Planter Strip. In instances where the required average depth of the landscape planter strip is legally utilized, in accordance with previous permits or approval, for parking, display, storage, building, or necessary vehicle circulation, the depth may be narrowed by the planning board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

If providing the required landscape planter strip along with other required landscaping and required vegetated areas in and around wetlands would cause the project to exceed the required open space standards, the depth of the landscape planter strip and the front yard may be reduced by the planning board so that the open space standards are not exceeded, but in no case to less than twenty (20) feet for this reason.

(C) Additions and Changes in Use. For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (See list of recommended street trees in Design Handbook) is required for every five hundred (500) square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore the planning board

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may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

(D) Residences. Residential additions to existing single and two-family dwellings and proposed single and duplex family dwellings are exempt from the landscaping standards of this subsection.

b. Buffer Area. Where buffering is required, it must provide a year-round visual screen in order to minimize adverse impacts and screen new development (See Design Guidelines for examples of appropriate buffers for various situations). It may consist of fencing, evergreens, retention of existing vegetation, berms, rocks, boulders, mounds or combinations thereof. Within three growing seasons, the buffer must provide a year-round screen at least eight feet in height or such lower height as determined by the planning board to be appropriate for the situation. Buffer areas must be maintained and kept free of all outdoor storage, debris, and rubbish. The width of the buffer area may be reduced with the ~~zoning~~ board of appeals approval through the miscellaneous appeal process if the function of the buffer is still unfulfilled.

c. Rural Landscape Features. Rural landscape features such as stonewalls, berms, and other agricultural structures, and tree lines or fields must be retained to the maximum extent practicable.

d. Lighting. Outdoor lighting must provide the minimum illumination needed for the safe use of the site while enhancing the nighttime visual character of the site. Lighting must conform to the standards for outdoor lighting in Chapter 16-~~32~~-8.

e. Outdoor Service and Storage Areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (See Design Handbook for examples of appropriate buffering).

6. Traffic and Circulation Standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the planning board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the planning board determines that such a route is needed for adequate pedestrian safety and movement (See Design Handbook for appropriate examples).

7. Open Space Standards. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams, and setbacks. Thirty-five percent (35%) of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space."

An objective of the open space standard is to encourage the integration of open space throughout the entire development and with the open space on adjoining properties in order to alter the pattern of commercial activity along Route 1. To this end, a minimum of twenty-five percent (25%) of the required open space must be located in the front fifty percent (50%) of the lot area closest to U.S. Route 1, or if not fronting Route 1, closest to the public street used to enter the lot.

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The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties.

Special Situations:

a. Cases Where Integrating Open Space Would Require Exceeding the Open Space Standards. In cases where the topography, wetlands, and existing development on the lot dictates that more than seventy-five percent (75%) of the required open space be located outside the front portion of the lot, a percentage of the open space normally required in the front portion of the lot may be shifted to the rear portion of the lot in order to achieve the required amount of vegetated open space and not reduce the allowable developable area on the lot, provided minimum landscaping standards are satisfied.

b. Small Lots. The required amount of designated open space is reduced to twenty percent (20%) of each lot that is less than one hundred thousand (100,000) square feet in size.

8. Mixed Use Requirement. The mixed use zone district is intended to allow for the creation of an area in the town that has a mix of uses and in which no single type of use predominates. To this end, larger scale projects must incorporate a mix of principal uses into the development. Any new development that creates more than twenty thousand (20,000) square feet of gross floor area must include at least two principal uses as set forth in the list of permitted uses and special exceptions. To fulfill this requirement, the smaller use or combination of smaller uses must contain at least ten percent (10%) of the gross floor area. The combination of retail uses that are permitted uses and one larger retail use allowed as a special exception does not fulfill this requirement. This provision does not apply to the development of lots of record as of April 1, 2004 that have a lot area of less than two hundred thousand (200,000) square feet.

9. Minimum Dimensional Standards. The following apply:

Minimum lot size:

lots with frontage on Route 1 200,000 square feet

lots without frontage on Route 1 80,000 square feet

Minimum street frontage on road with access along U.S.
Route 1, Haley Road, Lewis Road, or Cutts Road 250 feet

other streets or approved ways 150 feet

Minimum front yard 60 feet

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4229 _____
4230 Minimum rear and side yards 30 feet
4231 _____
4232 Maximum building height 40 feet
4233 _____
4234 Maximum height above grade of building-mounted signs 40 feet
4235 _____
4236 Minimum setback from steams, water bodies and wetlands.....in accordance with
4237 ~~Table 16.28~~ Table 16.34
4238 ~~set out at the end of Ch.~~
4239 ~~16.28~~ Ch. 16.34, and
4240 ~~Section 16.32.490(N)~~
4241 Section 16.34.490 and
4242 Appendix (N) Fee
4243 _____
4244 Minimum land area per unit for eldercare facilities that are
4245 connected to the public sewerage system:
4246 _____
4247 dwelling unit with two or more bedrooms 5,000 square feet
4248 _____
4249 dwelling unit with less than two bedrooms 4,000 square feet
4250 _____
4251 residential care unit 2,500 square feet
4252 _____
4253 Minimum land area per bed for nursing care and
4254 convalescent care facilities that are connected
4255 to the public sewerage system 2,000 square feet
4256 _____
4257 Buffer to I-95 ROW 40 feet
4258 _____
4259 Buffer to neighboring lot with an existing residence within
4260 100 feet of the lot line 40 feet
4261 _____
4262 _____
4263 A 40-foot vegetated buffer ~~shall~~ must be maintained between the MU and R-RL zones. ~~districts.~~
4264 _____
4265 For single-family dwellings, one dwelling unit is allowed for each two hundred thousand (200,000)
4266 square feet of land area. A lot of record having a land area of more than two hundred thousand
4267 (200,000) square feet that was improved with a single-family dwelling as of April 1, 2004 may be
4268 divided into two lots with a single-family dwelling on each lot provided that each of the lots contains
4269 at least forty thousand (40,000) square feet of land area and ~~conforms to~~ meets the other
4270 dimensional standards of the ~~zone, district.~~ Sections 16.12.3.0404(D)(1) and (D)(2) as set forth in
4271 ~~the rural residential - rural zone district~~ apply and no further subdivision is allowed.
4272 _____

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For dwelling units that are part of a mixed-use building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. If the parking for the residential units is integrated into the building, the minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet.

For elderly housing dwelling units that are connected to the public sewerage system, one dwelling unit is allowed for each fifteen thousand (15,000) square feet of buildable land area. If the parking for the elderly units is integrated into the building, the minimum required buildable land area per dwelling unit is reduced to ten thousand (10,000) square feet.

10. a. Conditions for Approving Special Exception Uses in the Mixed Use ~~Zone~~District.

i. A single retail use greater than fifty thousand (50,000) square feet in gross floor area and less than one hundred fifty thousand (150,000) square feet in gross floor area:

(A) Timing. No more than one retail use with a gross floor area greater than fifty thousand (50,000) square feet and less than one hundred fifty thousand (150,000) square feet may be approved in any three-year period.

(B) Size. A single retail use with a gross floor area greater than one hundred fifty thousand (150,000) square feet is not permitted.

ii. Gasoline Service Stations.

(A) Visual Screening. A year-round buffer area must be provided between the gasoline service station and neighboring uses in accordance with the landscaping standards of the mixed use zone ~~district~~ regulations.

(B) Separation Distance. A gasoline service station may not be located within two thousand (2,000) feet of another service station.

(C) Minimum Distance—Pump to Existing Structures. A fuel pump may not be located closer than one hundred fifty (150) feet to an existing occupied structure located off the site of the gasoline service station.

iii. Drive-in Theater.

(A) To protect the tranquility and quality of life of existing residential uses in the vicinity of the proposed drive-in theater, the hours of operation must be limited to the degree necessary and/or adequate visual and sound buffers must be established.

iv. Campground/Trailer Park.

(A) The standards in Article XIV of Chapter 16.32 must be satisfied.

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(B) Occupation of any site by single user for a period exceeding ninety-six (96) hours is prohibited.

(C) Quiet hours must be enforced between 10:00 p.m. and 7:00 a.m.

v. Motel or Hotel.

(A) Multiple-story structures are encouraged.

(B) Wherever practicable, building orientation should not be parallel to U.S. Route 1, but must take maximum advantage of the depth of the mixed use zone. ~~district~~.

(C) More than three separate motels and/or hotels may not be permitted in the mixed use zone. ~~district~~.

vi. Mineral/Earth Material Extraction.

(A) The standards for mineral/earth material exploration and removal in Article III Section 16.32.440 ~~16.32.440~~ must be met. ~~satisfied~~. (A) The standards for earth material removal in Section ~~16.32.8.440~~ 16.32.8.440 must be satisfied.

vii. Public Utility Facilities Including Substation, Pumping Stations, and Sewage Treatment Facilities.

(A) Public Health and Safety. Must not endanger the public health or safety;

(B) Protect Property Values. Must not unreasonably reduce the value of abutting property without just compensation;

(C) Prevent Nuisances. Must prevent the emission of nuisances, such as but not limited to noise, odors, dust, gas, fumes, smoke, light, vibrations, and electrical interference, beyond the boundaries of the site to the maximum extent practicable;

(D) Compatibility with Neighborhood and Landscape. Must be visually harmonious with the neighborhood and natural landscape by the use of adequate screening and/or architectural design as follows:

(1) Screening. Must be screened and buffered through landscaping, fencing, planted berms, existing vegetation, and separations of spaces to shield neighbors from any adverse external effects of the facility and to integrate the facility into the landscape. Plantings must be of sufficient maturity to achieve the desired screening effect within three years,

(2) Architectural Compatibility. Must be in architectural harmony with the area in which it is located to the maximum extent practicable through the appropriate use of facade materials, roof style, scale, bulk, and architectural style and details;

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(E) Location. Facilities located above ground must be sited so as to eliminate adverse impacts associated with the facility to the maximum extent practicable while still fulfilling the basic purpose of the facility.

viii. Housing for the Elderly.

(A) Location Suitability. The location of the site must allow it to be developed so that the residents of the project will be able to function as part of the community and have pedestrian access to services and facilities within the area.

(B) Mixed Use. If an elderly housing component is proposed as part of the project, it must be an essential element of the mixed use project and be designed to be an integrated part of the overall development.

ix. Commercial Greenhouses.

(A) The greenhouses and any related outdoor storage or service areas or structures must be visually buffered from Route 1 and adjacent properties.

(B) If the greenhouses will be internally lit between 9:00 p.m. and 6:00 a.m., the internal lighting may not be visible from adjacent properties including public streets.

(C) The noise resulting from the operation of the facility as measured at the property line must be comparable with other uses in the MU zoneddistrict during the period between 9:00 p.m. and 6:00 a.m.

(D) The greenhouses and related storage and service areas may not be located within two hundred (200) feet of any legally existing residential use, inn, motel or hotel, hospital, or nursing home/convalescent center on another lot.

x. Light Industry, Transportation Terminal, Warehousing/Storage, or Wholesale Business.

(A) The building and any related outdoor storage or service areas or structures must be visually buffered from Route 1 and adjacent properties by other uses allowed in the zoneddistrict and/or by a landscaped buffer strip.

(B) If the area between this use and Route 1 is not developed for another permitted use or special exception, it must be maintained as a naturally vegetated buffer in addition to the provision of a landscape planter strip.

(C) The noise resulting from the operation of the facility as measured at the property line must be comparable with other uses in the MU zoneddistrict during the period between 9:00 p.m. and 6:00 a.m.

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(D) The use and related storage and service areas may not be located within two hundred (200) feet for any legally existing residential use, inn, motel or hotel, hospital, or nursing home/convalescent center on another lot.

b. Notwithstanding the provisions of Title 1 M.R.S., ~~A Section § 302~~, and regardless of the date on which it is approved by the voters, this amendment shall be effective as of September 30, 1999, and shall govern any and all applications for permits or approvals required under the land use and development code of the town of Kittery, Maine that that were or have been pending before any officer, board or agency of the town of Kittery on or at any time after September 30, 1999. (~~Ord. 15-06 §§ 13—15; Ord. 8-05 § 1; Ord. 18-00; Ord. 12-00; Ord. 1-98; Ord. 8-97 §§ 2 (part), 3 (part); Ord. 2-97 (part); Ord. 8-96 (part); Ord. 1-95 (part); land use and dev. code § 3.4.9, 1994)~~)

Table 16.12			
Minimum Setbacks from Wetlands and Water Bodies			
Not Shown on the Official Shoreland Zoning Map			
STRUCTURE/ACTIVITY	TOTAL SIZE OF WETLAND AND/OR WATER BODY		
	< 1,001 square feet	1,001 square feet—1 acre and Intermittent Streams	> 1 acre
Local distribution utility pole, fence, flagpole, signs or drainage structure	0	0	0
Functionally water-dependent uses	0	0	0
Roads and Driveways			
Traveled way of road or driveway of 18 feet or less in width*	0	10 feet	10 feet
Traveled way of road or driveway greater than 18 feet in width*	0	30 feet	30 feet
Parking Areas			
Parking areas for one- and two-family residential uses	0	10 feet	20 feet
1—5 stall parking area	0	30 feet	50 feet
6—20 stall parking area incorporating BMPs for stormwater management**	0	40 feet	75 feet
6—20 stall parking area without incorporating BMPs for stormwater management	0	75 feet	100 feet

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Table 16.12			
Minimum Setbacks from Wetlands and Water Bodies			
Not Shown on the Official Shoreland Zoning Map			
STRUCTURE/ACTIVITY	TOTAL SIZE OF WETLAND AND/OR WATER BODY		
	< 1,001 square feet	1,001 square feet—1 acre and Intermittent Streams	> 1 acre
21+ stall parking area incorporating BMPs for stormwater management**	0	50 feet	75 feet
(Note: 21+ stall parking areas must incorporate BMPs)			
Patios, Decks, Accessory Buildings			
Patio or deck area no larger than 500 square feet in size	0	30 feet	50 feet
Detached residential storage shed no larger than 120 square feet in size	0	30 feet	50 feet
Other Buildings and Structures			
Building or structure (including patio or deck area larger than 500 square feet in size)	0	50 feet	100 feet
Activities and structures permitted within regulated wetlands	0	0 feet	0 feet
Subsurface Sewage Disposal			
Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of less than 2,000 GPD	0	50 feet	100 feet
Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of 2,000 GPD or more	0	100 feet	100 feet
Recreational Uses and Structures			
Low-intensity recreation	0	0	0
Recreational facility or structure excluding a golf course	0	50 feet	100 feet
Topsoil Removal			

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Table 16.12			
Minimum Setbacks from Wetlands and Water Bodies			
Not Shown on the Official Shoreland Zoning Map			
STRUCTURE/ACTIVITY	TOTAL SIZE OF WETLAND AND/OR WATER BODY		
	< 1,001 square feet	1,001 square feet—1 acre and Intermittent Streams	> 1 acre
Removal of more than 10 cubic yards of topsoil except for approved projects	0	50 feet	100 feet
Topsoil removal with a soil conservation service endorsed erosion and sedimentation plan	0	25 feet	25 feet
Special Uses			
Junkyard***	0	100 feet	150 feet
Bulk salt storage not in an enclosed structure***	0	100 feet	150 feet
Gravel and mineral extraction or processing***	0	100 feet	150 feet
Storage of hazardous chemicals or special wastes other than amounts normally associated with individual households/farms***	0	100 feet	150 feet
Commercial painting, wood preserving or furniture stripping***	0	100 feet	150 feet
Laundromats, auto wash, printing, drycleaning, photographic processing if not connected to a sanitary sewer***	0	100 feet	150 feet
Metal plating, finishing, polishing***	0	100 feet	150 feet

* The roadway setback ~~shall~~ may not serve to negate a wetland crossing project for which a wetlands permit has been approved by the planning board.

** Written endorsement by the York County soil and water conservation district (SCS) that Best Management Practices (BMPs) for protecting water quality by minimizing pollutants leaving the site in the stormwater runoff are incorporated to the maximum extent practicable is required to satisfy this condition. The planning board may waive the requirement for written endorsement by the SCS when it finds a drainage plan has adequately protected the wetland from adverse impacts.

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*** Wetland setback may be reduced to 100 feet, if the stormwater management plan is endorsed by the SCS as incorporating BMPs for protecting water quality by minimizing pollutants leaving the site in the stormwater runoff.

~~(Ord. 14-08 (part); Ord. 15a-99; Ord. 15-99; Ord. 9-96 § 33; land use and dev. code Table 3-1)~~

16-12-.3.140 Mixed Use - Badgers Island-urban — MU - BI.

A. Purpose. To provide opportunities for a wide variety of uses, including marine-related activities, offices, restaurants, shops, residences and services, to take advantage of a unique island setting located within walking distance to both downtown Portsmouth and downtown Kittery in which water and sewer services are available to support development.

This zone district is further intended to develop standards appropriate for existing small lot sizes and street frontages to encourage investment in buildings that will contribute to the revitalization of the greater Kittery Foreside area while balancing business and residential interests to keep property values up and maintain an urban residential quality of life in the zone district.

B. Permitted Uses:

1. Dwellings, or modular homes, exclusive of mobile homes;
2. Public open space and recreational uses;
3. School, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature, which is not used for residential occupancy;
4. Accessory buildings and uses, including home occupations;
5. Day care facility;
6. Retail business and service establishments, but excluding those with any outdoor sales and/or storage;
7. Business and professional offices;
8. Shuttle service and ride sharing facilities;
9. Restaurant with the hours of operation limited to five a.m. to eleven p.m. but excluding restaurants where ordering and/or pickup of food may take place from a motorized vehicle;
10. Art studio/gallery;
11. Grocery store, food store;

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- 4472 _____
- 4473 12. Personal, business or mechanical service;
- 4474 _____
- 4475 13. Inn;
- 4476 _____
- 4477 14. Apartment building;
- 4478 _____
- 4479 15. Boat yard;
- 4480 _____
- 4481 16. Marina;
- 4482 _____
- 4483 17. Commercial boating and fishing uses and facilities, provided only incidental cleaning and
- 4484 cooking of seafood occur at the site;
- 4485 _____
- 4486 18. Aquaculture;
- 4487 _____
- 4488 19. Research laboratories;
- 4489 _____
- 4490 20. Conference center; and
- 4491 _____
- 4492 21. Accessory dwelling units.
- 4493 _____
- 4494 C. Special Exceptions Uses:-
- 4495 _____
- 4496 1. Commercial recreational use;
- 4497 _____
- 4498 2. Place of assembly, including theater;
- 4499 _____
- 4500 3. Public utility facilities, including substations, pumping stations, and sewage treatment
- 4501 facilities;
- 4502 _____
- 4503 D. Standards.
- 4504 _____
- 4505 1. The design and performance standards of Chapters 16.32 and 16.34 must be met ~~shall be~~
- 4506 ~~observed~~ except where specifically altered in this subsection.
- 4507 _____
- 4508 2. The following space standards ~~shall~~ apply:
- 4509 _____
- 4510 _____
- 4511 Minimum land area per dwelling unit 3,000 square feet
- 4512 for each of the first
- 4513 two dwelling units,
- 4514 6,000 square feet thereafter
- 4515 _____
- 4516 Minimum lot size 6,000 square feet

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4517 _____
4518 Minimum street frontage 50 feet
4519 _____
4520 Minimum front yard 5 feet
4521 _____
4522 Minimum rear and side yards 10 feet
4523 _____
4524 Maximum building height 40 feet
4525 _____
4526 Minimum setback from water bodies and wetlands:
4527 water-dependent uses 0 feet
4528 _____
4529 all other uses (including buildings and parking) 75 feet unless modified,
4530 according to the terms of
4531 subsection (E) of this section.
4532 _____
4533 Minimum open space on the site 40% except the ~~ZB~~ABOA
4534 may approve a miscellaneous
4535 appeal application to
4536 reduce the required
4537 open space to 30 percent
4538 where it is clearly
4539 demonstrated that no
4540 practicable alternative
4541 exists to accommodate a
4542 water-dependent use.
4543 _____
4544 _____
4545 E. Special Incentives to Encourage Appropriate Waterfront Activity. To encourage objectives of
4546 the comprehensive plans to (1) provide public access to the waterfront, (2) retain and expand
4547 commercial water-dependent uses, and (3) take extraordinary steps to preserve the environmental
4548 quality of the shoreline and tidal waters, the required setback from water bodies and wetlands may
4549 be reduced to twenty-five (25) feet where the planning board finds ~~that~~ a development plan
4550 significantly contributes to accomplishment of the above objectives by satisfactorily achieving one
4551 or more of the following:
4552 _____
4553 1. Public Access. Grants an easement to the town, or other acceptable party, providing public
4554 access to the waterfront at no charge to the general public via a developed accessible pedestrian
4555 route with appropriate signage or includes an outdoor deck or patio for customer seating at a
4556 restaurant open to the general public; or
4557 _____
4558 2. Retain/Expand Commercial Water-Dependent Uses. Provides for inclusion of commercial
4559 water-dependent use(s) on the property for the duration of the portion of the project that
4560 encroaches closer than the normal minimum setback from water bodies and wetlands. Provision of

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fewer than six boat slips for leisure/recreational boating do not constitute a commercial water-dependent use for the purposes of this section; or

3. Preserve the Environmental Quality of Coastal Resources. Protect existing wildlife habitat, conserve shore cover and ensure the quality of stormwater runoff by satisfying all of the following standards:

a. Retain and protect existing significant wildlife habitat that provides food, cover and/or nesting for migratory song birds and wading birds,

b. In order to conserve shore cover, contiguous areas of shrubberies of varying height, such as dwarf species of barberry, serviceberry, holly, crabapple, dogwood, cotoneaster, euonymous, firethorn and/or rosa rugosa, as well as erosion resistant ground cover plantings must be retained and planted, and existing trees retained, wherever practicable in the setback,

c. Implementation of a stormwater management plan endorsed by the York County Soil and Water Conservation District (SCS), that treats stormwater with appropriate BMPs and removes pollutants in accordance with Volume III of the Maine Department of Environmental Protection BMP Manual, "Stormwater Management for Maine," January 2006.

i. Removal of eighty percent (80%) of the total suspended solids pollutant load from the "first flush" of runoff (first 1/2inch of rainfall per storm event) from the site, or

ii. Removal of pollutants that equals or exceeds the removal rate of sheet flow over a seventy-five (75) ~~feet~~foot vegetated filter strip on the site.

Pollutants sought to be removed include suspended solids, nitrates, hydrocarbons and heavy metals. Such special treatment of the first flush of runoff may include detention, infiltration, filtering and trapping of pollutants.

F. Special Parking Standards.

1. Revised Off-Street Parking Standards. Off-street parking must be provided in accordance with Section 16-32-~~8~~530 unless modified below for the following uses:

a. Dwellings: one and one-half parking space for each dwelling unit;

b. Retail stores: one parking space for each four hundred (400) square feet of gross floor area;

c. Drive-in restaurants, snack bars and fast food outlets, but excluding restaurants where ordering and/or pickup of food may take place from a motorized vehicle: one parking space for every three seats, but in no case less than four spaces;

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d. Conference centers: one parking space for every sixty (60) square feet in the largest assembly or meeting room.

2. Joint Use Parking. Required off-street parking may be satisfied by the joint use of parking spaces by two or more uses if the applicant can show that parking demand is nonconflicting and will reasonably provide adequate parking for multiple uses without parking overflowing into undesignated areas. Nonconflicting periods may consist of day time as opposed to evening hours of operation or weekday as opposed to weekend hours of operation or seasonal variation in parking demand. In making this determination under development plan review, the planning board must consider the following factors:

a. Such joint parking areas must be held under ownership or under terms of a contractual agreement that ensures such parking remains available to all users of the shared parking spaces;

b. Analysis is based on a most frequent basis, not a “worst case” scenario;

c. Joint use parking areas must be located within reasonable distance to the uses served, but do not need to be located on the same parcel as the uses served;

d. Ease and safety of pedestrian access to shared parking by the users served, including any improvements or shuttle service necessary;

e. Such joint parking areas ~~must~~may not be located in residential zoning districts of the town of Kittery.

3. Off-Site Parking. Required off-street parking for employee use may be satisfied at off-site locations located within one thousand (1,000) feet measured along lines of public access from the lot to be served provided such parking area is on other property owned by the applicant or under terms of a contractual agreement that will ensure such parking remains available to the use served.

Required off-street parking for employee use may be satisfied at off-site locations greater than one thousand (1,000) feet from the lot served upon a finding by the planning board that such parking is practicable and will reasonably prevent overflow parking from occurring on Badgers Island in undesignated locations. In making this determination under development review, the planning board must consider the following factors:

a. Such parking must be located within a reasonable distance to the users.

b. Such parking area must be on other property of the applicant or under terms of a contractual agreement that will ensure such parking remains available to the use served.

c. Safe and convenient means of transporting users to and from the off-site parking must be demonstrated by the applicant.

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d. Such off-site parking area must not be located in residential zoning districts of the town of Kittery.

Off-site parking for use by employees may deviate from the dimensional standards contained in Figure 2 for Chapter 16.32, Parking Space Design, if the applicant can demonstrate that the proposal practicably accommodates the number of parking spaces proposed.

4. ~~Parking Demand Management (PDM) Strategies. Parking demand strategies are measures geared toward affecting the demand side of the parking equation rather than the supply side. They attempt to change people's behavior away from traveling to work as a single occupant in an automobile to be parked near the work site. To be successful, they must rely on incentives or disincentives to make these shifts in behavior attractive to the traveler.~~

~~A portion of required off-street parking may be satisfied by an owner incorporating PDM strategies to effectively reduce demand for parking stalls as determined by the planning board. In making this determination the planning board, under development plan review, the board must consider the following factors:~~

a. ~~The written commitment of the employer to maintain and enforce parking policies to reduce demand for parking stalls;~~

b. ~~The likelihood that specific incentives and policies adopted by the applicant will reduce parking demand on a regular basis throughout the year;~~

c. ~~Written commitments by employees to participate in PDM strategies; and~~

d. ~~The results of any studies demonstrating the effectiveness of strategies adopted by the applicant to reduce parking demand.~~

~~PDM strategies include, but are not limited to, the following:~~

i. ~~Increase the Number of Persons Per Parked Vehicle. Potential incentives:~~

~~Preferential parking locations for car pools and van pools;~~

~~Guaranteed ride home programs/taxi subsidies;~~

~~Employer provision of vans for van pools; and~~

~~Financial incentives to participants in car pools and van pools.~~

ii. ~~Increase the Number of Persons Using an Alternative Mode of Travel to the Automobile, Such as Walking, Bicycling, Motorcycle, Moped, Bus, and Shuttle Service. Potential incentives:~~

~~Preferential parking locations for alternative modes of travel;~~

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4695 _____
4696 ~~_____ Provision of changing rooms, lockers and showers;~~
4697 _____
4698 ~~_____ Early work release for employees using alternative modes of travel;~~
4699 _____
4700 ~~_____ Financial subsidies toward the purchase of alternative modes of travel to be used for~~
4701 ~~commuting;~~
4702 _____
4703 ~~_____ Guaranteed ride home programs in inclement weather;~~
4704 _____
4705 ~~_____ Preferential work station locations;~~
4706 _____
4707 ~~_____ Free use of a business vehicle for errands, lunch and off-site appointments.~~
4708 _____
4709 ~~iii. _____ Influencing the Time of, or Need to, Travel to Work. Potential incentives:~~
4710 _____
4711 ~~_____ Reward employees who telecommute from their home or other remote location;~~
4712 _____
4713 ~~_____ Offer an optional four-day, forty (40) hour work week as an alternative to a five-day work~~
4714 ~~week;~~
4715 _____
4716 ~~_____ Allow nonoverlapping early and late work shifts;~~
4717 _____
4718 ~~_____ Flextime.~~
4719 ~~(Ord. 14-08 (part); Ord. 4-97 (part))~~
4720 _____
4721 ~~16.12.3.150 Kittery Foreside _____—KF.~~
4722 _____
4723 ~~The Kittery Foreside district encompasses generally the area between Route 1 (south) (Newmarch~~
4724 ~~Street) on the west, one lot depth on Newmarch Street, except at the corner of Government Street,~~
4725 ~~where it extends to Stimson Street, and except for the existing commercial zone (slightly reduced~~
4726 ~~by the residential lots west of Priscilla Terrace); the railroad to the north extended over to the~~
4727 ~~Piscataqua River; and the Piscataqua River forming the east and southern boundaries. For the~~
4728 ~~exact boundaries of the district, refer to the zoning map of the town of Kittery, the official shoreland~~
4729 ~~zoning map, and Section 16.12.3.0303 of the land use and development code.~~
4730 _____
4731 A. Purpose. The intent of the zone district is to provide business, service, and community
4732 functions within the Mixed Use - Kittery Foreside zone district and to provide a mix of housing
4733 opportunities in the historic urbanized center of the community and to allow for use patterns which
4734 recognize the densely built-up character of the zone district and the limitations for providing off-
4735 street parking. Design review is used to facilitate the revitalization of downtown Kittery Foreside as
4736 a neighborhood center, while promoting economic development of service businesses and walk-in
4737 shopping as well as respecting the zone's district's historic and residential character.
4738 _____
4739 B. Permitted Uses.;

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- _____
1. Dwelling units in single-family, duplex, and multifamily configurations and units in a mixed-use building up to twelve (12) dwelling units per lot, but excluding ~~mobile home~~ mobile homes;
- _____
2. Public open space recreational uses;
- _____
3. School (including nursery school), hospital, eldercare facility, long-term nursing care facility, convalescent care facility, municipal or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature which is not used for residential occupancy purposes;
- _____
4. Accessory uses including home occupation and church rectory;
- _____
5. Retail business and service establishments excluding those where the principal activity entails outdoor sales and/or storage;
- _____
6. Business and professional offices, including financial institutions;
- _____
7. Shuttle service and ride sharing facilities;
- _____
8. Restaurant, coffee shop, bakery, cafes and similar food service operations but excluding drive-in facilities;
- _____
9. Art studio or gallery;
- _____
10. Grocery store, food store;
- _____
11. Personal and/or business service;
- _____
12. Inn;
- _____
13. Commercial or private parking lots;
- _____
14. Marinas;
- _____
15. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
- _____
16. Place of assembly, including theater;
- _____
17. Temporary, intra-family dwelling unit; and
- _____
18. Accessory dwelling units.
- _____
- C. Special Exceptions Uses;

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4785 _____
4786 1. Research and development;
4787 _____
4788 2. Public utility facilities, including substations, pumping stations, and sewage treatment
4789 facilities.
4790 _____
4791 D. Prohibited Uses. Any use not listed as a permitted use or a special exception use is prohibited
4792 in the zone ~~district~~.
4793 _____
4794 E. Standards.
4795 _____
4796 1. The design and performance standards of Chapters 16.32 and 16.34 must be met ~~observed~~
4797 except where specifically altered in this subsection.
4798 _____
4799 2. Dimensional Standards. The following space standards apply:
4800 _____
4801 Minimum land area per dwelling unit 5,000 square feet
4802 _____
4803 Minimum lot size 5,000 square feet
4804 _____
4805 Minimum street frontage 0 feet
4806 _____
4807 Minimum front yard:
4808 _____
4809 along Government Street east of Jones Avenue
4810 including Lot 107 at the corner of Government and
4811 Walker Streets 0 feet
4812 _____
4813 along other streets 10 feet
4814 _____
4815 Minimum rear and side yards 10 feet
4816 _____
4817 Minimum separation distance between principal
4818 buildings on the same lot 10 feet
4819 _____

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4820 Maximum building height 40 feet except that for buildings
4821 ~~that are~~ located on lots that abut tidal
4822 waters, the highest point on the primary
4823 structure of the building including the
4824 roof, but excluding chimneys, towers,
4825 cupolas, and similar appurtenances that
4826 have no floor area, ~~shall~~ may be not more
4827 than thirty-five (35) feet above the
4828 average grade between the highest and
4829 lowest elevations of the original
4830 ground level adjacent to the building.

4831 _____
4832 Minimum setback from water bodies and wetlands:

4833 _____
4834 water-dependent uses 0 feet
4835 _____
4836 all other uses (including buildings and parking as
4837 modified by the terms of subsection (E) of this section) 75 feet
4838 _____

4839 Maximum building coverage 60 percent
4840 _____

4841 Minimum open space on the site 40 percent
4842 _____

4843 Minimum land area per unit for eldercare facilities
4844 that are connected to the public sewerage system:
4845 _____

4846 dwelling unit with two or more bedrooms 3,000 square feet
4847 _____

4848 dwelling unit with less than two bedrooms 2,500 square feet
4849 _____

4850 residential care unit 2,000 square feet
4851 _____

4852 Minimum land area per bed for nursing care
4853 and convalescent care facilities that are
4854 connected to the public sewerage system 1,500 square feet
4855 _____

4856 _____
4857 3. Maximum Building Footprint. The maximum area of the building footprint of any new
4858 building is one thousand five hundred (1,500) square feet unless the building is replacing a larger
4859 building that existed on the lot as of April 1, 2005. If the footprint of the pre-existing building was
4860 larger than one thousand five hundred (1,500) square feet, the maximum size of the footprint of
4861 the pre-existing building was larger than one thousand five hundred (1,500) square feet, the
4862 maximum size of the footprint of the new building may be no larger than the footprint of the pre-
4863 existing building. If the footprint of the new building is larger than one thousand five hundred

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(1,500) square feet, the width of the new building as measured parallel to the front lot line may not be greater than the width of the pre-existing building.

4. Design Standards. Any new building, or additions or modifications to an existing building that: (1) cumulatively increase the building footprint or building volume by more than thirty percent (30%) after April 1, 2005, or (2) is subject to shoreland zoning as set forth in Section 16-32.8.490(C), must conform to the following standards. This requirement ~~shall~~ does not apply to the replacement of a building destroyed by accidental or natural causes after April 1, 2005 that is rebuilt within the pre-existing building footprint and that does not increase the pre-existing building volume by more than thirty percent (30%).

a. Placement and Orientation of Buildings Within a Lot. The placement of buildings on the lot must acknowledge the uniqueness of the site, the neighboring buildings, and the natural setting. Existing views and vistas must be preserved in the design of the site and buildings, and buildings must be placed to frame, rather than block, vistas. Buildings and the front elevation must be oriented facing the street on which the building is located. The siting of buildings on corner lots must consider the placement of buildings on both streets.

b. Overall Massing of Buildings. The overall massing objective is to simulate a concentrated use of space in the Foreside district while avoiding the use of large, multi-unit buildings. In the interest of this objective, building footprints must ~~conform to~~ meet the maximums set forth above. Larger parcels may be developed but will require the use of multiple buildings with smaller footprints. The smaller scale of the buildings will allow new projects to fit in with the existing architectural styles of the Foreside district.

c. Grouping of Smaller Buildings. When smaller buildings that are part of one project are placed adjacent to one another on the same lot or adjacent lots, each building must have its own structure and elevation treatment that is different from its neighbor. Small decorative wings may be attached to larger structures if well integrated into the overall arrangement of shapes.

d. Building Details. Buildings must include architectural details that reflect the historic style of the Foreside district. Molding and trim must be used to decorate or finish the surface of buildings and doors. Eaves and overhangs should be incorporated into the design.

e. Roof Slopes and Shapes. Allowable roof shapes include a simple gable, gambrel, saltbox, and hip. The minimum roof pitch must be 8:12 (rise over run) except in the case of a hip roof where a lesser pitch is acceptable. The roof pitch of elements that link buildings or portions of buildings must be the same or greater than the pitch of the roofs on the buildings that are being linked. Flat or nearly flat shed roofs are not allowed except for porches, dormers, or attachments distinct from the primary structure or where systems are concealed by standard roof forms. The roof pitch of additions or wings must be similar to the pitch of the primary roof. Clusters of buildings must apply the same roof plan principles to pitch and link roofs.

f. Fencing and Walls. Fencing may be used to separate public and private spaces, mark property lines, and protect plantings. Fences must harmonize with nearby structures and not

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unduly interfere with existing scenic views or vistas. Picket and other medium height fences and low stone walls are permitted. Modern concrete walls and similar structures are prohibited. Chain-link and stockade fences are not appropriate in front yards and may be used in side and rear yards only if compatible with the overall design of the site. Waste receptacles, dumpsters, exterior systems, service entrances and similar areas must be screened with board fences, board and lattice fences, and/or landscaping.

g. Utilities. All utilities serving a new building including electricity, telephone, cable, Internet, and alarm systems must be placed underground from the access pole.

h. Preservation of Trees. Existing large, healthy trees must be preserved if practical.

5. Display of signboard and/or products for sale may be placed on a town sidewalk only if:

a. Products for sale displayed outside the building are limited to an area extending no greater than two feet from the front facade of the building;

b. Signboards are permitted in accordance with a design detailing style and size submitted by Kittery Foreside committee and approved by the planning board and on file in the planning office;

c. Signboards and/or products for sale must be removed from the sidewalk at the close of each business day;

d. An annual permit must be obtained from the code enforcement officer. Permits are issued for a calendar year or portion thereof, to expire December 31st of each year. Sign permit application fee, reference Appendix L.

F. Special Parking Standards-Preamble.

It is understood by the town that the Kittery Foreside district is already largely built up and that many buildings either completely or almost completely cover the lot on which they are located. Therefore, it is not possible to comply with parking standards which would otherwise be required for open land. To encourage the reuse of existing structures as far as practical, the town establishes special parking standards and conditions within the district.

1. Revised Off-Street Parking Standards. Insofar as practical, parking requirements are to be met on-site unless an existing building covers so much of the lot as to make the provision of parking impractical in whole or in part. If meeting the parking requirements is not practical, then the parking demand may be satisfied off-site or through joint use agreements as specified herein.

Notwithstanding the off-street parking requirements in Sections ~~16.32.8.530~~ through ~~16.32.8.560~~, minimum parking requirements for the uses below are modified as specified herein:

a. Dwelling units in buildings that existed as of April 1, 2005 including the replacement of units destroyed by accidental or natural causes regardless of how configured: one parking space per dwelling unit;

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- _____
- b. Dwelling units in new buildings including the replacement of existing buildings other than the replacement of units destroyed by accidental or natural causes: one and one-half parking spaces per dwelling unit;
- _____
- c. Retail, business office, or bank facilities: one parking space for each four hundred (400) square feet of gross floor area;
- _____
- d. Professional office: one parking space for each three hundred (300) square feet of gross floor area;
- _____
- e. Inn: one parking space for each guest room;
- _____
- f. Church: None required, if primary use occurs on weekends;
- _____
- g. Restaurants: one parking space for each one hundred (100) square feet of gross floor area used by the public.
- _____
- For each use in the zone district, the total parking demand is calculated using the standards above or in Section 16-32-8.530 if not modified above. Then each nonresidential use is exempt from providing off-street parking for the first three required spaces. For uses requiring a demand of greater than three, then the off-street parking is to be provided on-site and/or in accordance with subsections (E)(2) and (3) of this section.
- _____
2. Maximum Parking on New Impervious Surface. Not more than one and one-half parking spaces per dwelling unit may be created on new impervious surface in conjunction with the construction of a new or replacement building. This restriction does not apply to parking spaces located within the same building with the dwelling units, to spaces located on pre-existing impervious surface, or to spaces located on a pervious surface such as parking pavers designed to allow infiltration of precipitation.
- _____
3. Off-Site Parking. Required off-street parking may be satisfied at off-site locations provided such parking is on other property owned by the applicant or is under the terms of a contractual agreement that will ensure such parking remains available for the uses served. Applicant ~~shall~~ must present evidence of a parking location and a contractual agreement to the town board or officer with jurisdiction to review and approve.
- _____
4. Joint Use Parking. Required off-street parking may also be satisfied by the joint use of parking space by two or more uses if the applicant can show that parking demand is nonconflicting and will reasonably provide adequate parking for the multiple uses without parking overflowing into undesignated areas. Nonconflicting periods may consist of day time as opposed to evening hours of operation or weekday as opposed to weekends or seasonal variation in parking demand. In making this determination under development plan review, the planning board ~~shall~~ is to consider the following factors:
- _____

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a. Such joint parking areas must be held under ownership of the applicant or under terms of a contractual agreement that ensures such parking remains available to all users of the shared parking spaces;

b. Analysis is to be based on a most frequent basis, not a “worst case” scenario;

c. Joint use parking areas must be located within reasonable distance to the use served, but do not need to be located on the same lot as the uses served;

d. Ease and safety of pedestrian access to shared parking by the users served, including any improvements or shuttle service necessary;

e. Such joint parking areas must not be located in residential zones ~~in districts of the town of Kittery.~~ The planning board ~~must~~ shall make a final determination of the joint use and/or off-site parking spaces that constitute an acceptable combination of spaces to meet the required parking demand.

G. Design Review. Any project involving the construction of a new building, or the enlargement or modification of an existing building that: (1) cumulatively increases the building footprint or building volume by more than thirty percent (30%) after April 1, 2005, or (2) is subject to the shoreland overlay zone ~~ing requirements~~ as set forth in Section ~~16.12.160 16.32.490(C)~~, is subject to an advisory design review by the Kittery Foreside committee (KFC). This requirement ~~shall~~ does not apply to the replacement of a building destroyed by accidental or natural causes after April 1, 2005 that is rebuilt within the pre-existing building footprint and that does not increase the pre-existing building volume by more than thirty percent (30%). This review is limited to consideration of the project's conformance with the design standards set forth in subsection (E)(4) of this section. Upon receipt of an application for a project in the district that is subject to this requirement, town staff shall forward the application to the chair of the KFC. The application must contain adequate information to allow the committee to evaluate the project's conformance with the design standards of subsection (E)(4) of this section.

~~(Ord. 14-08 (part); Ord. 15-06 §§ 16—17; Ord. 15-05 § 1; Ord. 14-99; Ord. 10-97 (part))~~

The Kittery Foreside committee ~~(KFC) shall have~~ has a maximum of forty-five (45) days to complete its review of the project. The KFC ~~shall~~ is to provide a written report documenting its findings relative to conformance with the design standards and any recommendations for changes to the project needed to conform ~~with~~ to the standards. The design review must be completed prior to approval of a development plan under Chapter 16.36, or the issuance of a building permit if development review is not required, unless the KFC fails to complete its review within forty-five (45) days in which case the application must be processed without the KFC review. The findings of the design review must be provided to the planning board and/or CEO for consideration in their actions relative to the project. ~~(Ord. 14-08 (part); Ord. 15-06 §§ 16—17; Ord. 15-05 § 1; Ord. 14-99; Ord. 10-97 (part))~~

16.3.160 Shoreland Overlay Zone OZ-SL.

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A. Purposes. The purposes of this Code are to further the maintenance of safe and healthful conditions, to prevent and control water pollution, to protect fish spawning grounds, aquatic life, bird and other wildlife habitat, to protect buildings and lands from flooding and accelerated erosion, to protect archaeological and historic resources, to protect commercial fishing and maritime industries, to protect freshwater and coastal wetlands, to control building sites, placement of structures and land uses, to conserve shore cover, and visual as well as actual points of access to inland and coastal waters, to conserve natural beauty and open space, and to anticipate and respond to the impacts of development in shoreland areas.

B. Authority. These provisions have been prepared in accordance with the provisions of 38 M.R.S., §435-449.

C. Applicability and Boundaries. The provisions of this section apply to all uses, lots and structures within the following:

1. Shoreland Overlay Zone – Water Body/Wetland Protection Area – 250' -OZ-SL-250' - land areas within 250 feet, horizontal distance, of the:

- a. normal high-water line of any river or saltwater body.
- b. upland edge of a coastal wetland, including all areas affected by tidal action.
- c. land edge of a fresh water wetland connecting to a protected stream as identified on the Zoning Map.

2. Shoreland Overlay Zone - Stream Protection Area - 75' - OZ-SL-75' - land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a river, or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. However, where a stream and its associated Shoreland Overlay Zone area are located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area will be regulated under the provisions of the Shoreland Overlay Zone associated with that water body or wetland.

Wherein uncertainty exists as to the exact location of the shoreland overlay zone boundary, the Planning Board with expert consultation as may be required, is the final authority as to location.

D. Land Use in the Shoreland Overlay Zone: Uses are allowed in accordance with the land use standards established in the underlying base zone in Chapter 16.12, Zoning Regulations and land uses identified by the Mandatory Shoreland Zoning Act, 38 M.R.S., §435-449, as appropriate uses in the Shoreland Overlay Zone.

1. Residential - Rural Zone (R-R).

a. Permitted Uses.

i. Dwellings, or modular home, exclusive of a mobile home, in a single-family or duplex configuration;

ii. Public open space recreational uses;

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- 5088 iii. Any agricultural building or use except a sawmill, piggery, or the raising of poultry for
5089 commercial purposes;
- 5090 iv. Accessory uses and buildings;
- 5091 v. Individual private campsite.
- 5092 b. Special Exception Uses.
- 5093 i. Dwellings in a multi-unit configuration;
- 5094 ii. School, hospital, long-term nursing care facility, convalescent care facility, municipal building
5095 or use, church, or other institution of educational, religious, philanthropic, fraternal or social nature
5096 which is not used for residential occupancy;
- 5097 iii. Home occupations;
- 5098 iv. Day care facility;
- 5099 v. Accessory dwelling units.
- 5100 vi. Public utility facilities including substations, pumping stations and sewage treatment facilities;
- 5101 vii Mineral extraction subject to Chapter 16.34.440;
- 5102 viii. Recreation activity buildings and grounds operated for profit exclusive of drive-in theaters.
- 5103 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
5104
- 5105 2. Residential – Suburban Zone (R-S).
- 5106 a. Permitted Uses.
- 5107 i. Dwellings, or modular home, exclusive of a mobile home, in a single-family or duplex
5108 configuration;
- 5109 ii. Public open space recreational uses;
- 5110 iii. Day care facility;
- 5111 iv. Elderly day care facility;
- 5112 b. Special Exception Uses.
- 5113 i. Dwellings in a multi-unit residential configuration with not more than four units per building and
5114 mobile homes;
- 5115 ii. School or educational facility (including nursery schools), eldercare facility, hospital, long-term
5116 nursing care facility, convalescent care facility, municipal, county, or state building or use, church;
5117 or other institution of educational, religious, philanthropic, fraternal, political, or social nature which
5118 is not used for residential occupancy. Any single listed use may not occupy more than five
5119 thousand (5,000) square feet of floor area;
- 5120 iii. Accessory dwelling unit;
- 5121 iv. Public utility facilities including substations, pumping stations and sewage treatment facilities;
- 5122 v. Mineral extraction subject to the performance standards of this title;
- 5123 vi. Home occupations.
- 5124 c. Prohibited Uses. Prohibited land use is any use not listed as a permitted or special exception
5125 use.
5126
- 5127 3. Residential - Kittery Point Village (R-KPV)
- 5128 a. Permitted Uses.
- 5129 i. Dwellings, or modular home, exclusive of a mobile home, in a single-family or duplex
5130 configuration;
- 5131 ii. Any agricultural building or use except a sawmill, piggery, or the raising of poultry for
5132 commercial purposes;

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- 5133 iii. Accessory uses and buildings;
5134 iv. Day care facility;
5135 b. Special Exception Uses.
5136 i. Dwellings in a multi-unit residential configuration with not more than four units per building;
5137 ii. School or educational facility (including nursery schools), municipal, county, or state building or
5138 use, church; or other institution of educational, religious, philanthropic, fraternal, political, or social
5139 nature which is not used for residential occupancy. Any single listed use may not occupy more
5140 than five thousand (5,000) square feet of floor area;
5141 iii. Home occupation;
5142 iv. Accessory dwelling units;
5143 v. Public utility facilities including substations, pumping stations and sewage treatment facilities.
5144 c. Prohibited Uses. Prohibited land use is any use not listed as a permitted or special exception
5145 use.
5146
5147 4. Residential – Urban Zone (R-U).
5148 a. Permitted Uses.
5149 i. Dwellings, or modular home, in a single-family or duplex configuration;
5150 ii. Public open space recreational uses;
5151 iii. Day care facility;
5152 iv. Accessory uses and buildings;
5153 b. Special Exception Uses.
5154 i. Dwellings in a multi-unit residential configuration;
5155 ii. Accessory dwelling units.
5156 iii. School (including day nursery), hospital, long-term nursing care facility, convalescent care
5157 facility, municipal or state building or use, church, or any other institution of educational, religious,
5158 philanthropic, fraternal, political or social nature, which is not used for residential occupancy;
5159 iv. Home occupation;
5160 v. Public and private recreational uses exclusive of drive-in theaters;
5161 vi. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
5162 vii. Inn;
5163 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
5164
5165 5. Residential - Village Zone (R-V).
5166 a. Permitted Uses.
5167 i. Dwellings, or modular home, exclusive of a mobile home, in a single-family or duplex
5168 configuration;
5169 ii. Public recreation;
5170 iii. Municipal, county, or state building or use; Accessory buildings and structures.
5171 b. Special Exception Uses.
5172 i. Dwellings in a multi-unit residential configuration;
5173 ii. Home occupation;
5174 iii. Accessory dwelling unit;
5175 iv. Public utility facilities, including substations, pumping stations, and sewage treatment facilities;
5176 v. Day care or nursery school facility for thirteen (13) or more persons in care, in conformance
5177 with the standards for a major home occupation (see Section 16.32.1180);

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c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.

6. Residential – Rural Conservation Zone (R-RC).

a. Permitted Uses.

i. Dwellings, or modular home, exclusive of a mobile home, in a single-family or duplex configuration;

ii. Any agricultural building or use except sawmill, piggery, or the raising of poultry for commercial purposes;

iii. Timber harvesting;

iv. Public recreation;

v. Accessory uses and buildings;

b. Special Exception Uses.

i. Dwellings in a multi-unit residential configuration;

ii. Home occupation;

iii. Accessory dwelling units.

iv. School, municipal building or use; or any other institution of educational, religious, philanthropic, fraternal, or social nature which is not used for residential occupancy;

v. Public and private open space recreational uses exclusive of drive-in theaters;

vi. Public utility facilities including substations, pumping stations, and sewage treatment facilities;

vii. Day care facility;

c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.

7. Business – Local Zone (B-L).

a. Permitted Uses.

i. Dwellings, or modular home, exclusive of a mobile home, in a single-family or duplex configuration;

ii. Public open space recreational uses;

iii. Accessory uses and buildings;

iv. Aquaculture;

b. Special Exception Uses.

i. Dwellings in a multi-unit residential configuration;

ii. School or educational facility (including nursery schools), day care facility, eldercare facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political or social nature which is not used for residential occupancy;

iii. Home occupation;

iv. Retail business and service establishments, but excluding those of which the principal activity entails outdoor sales and/or storage and excluding those specifically mentioned under subsection C of this section;

v. Business and professional offices;

vi. Mass transit station;

vii. Commercial parking lot or parking garage;

viii. Restaurant;

ix. Art studio or gallery;

x. Convenience store, food store, grocery store;

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- 5223 xi. Personal service;
5224 xii. Business service;
5225 xiii. Building materials, but excluding those of which the principal activity entails outdoor sales
5226 and/or storage;
5227 xiv. Garden supply;
5228 xv. Conference center;
5229 xvi. Commercial boating and fishing uses and facilities, provided only incidental cleaning and
5230 cooking of seafood occur at the site;
5231 xvii. Accessory dwelling unit;
5232 xviii. Motel, hotel, inn, or rooming house;
5233 xix. Place of public assembly, including theater;
5234 xx. Public utility facilities including substation, pumping stations, and sewage treatment facilities;
5235 xxi. Apartment building;
5236 xxii. Residential dwelling units as part of a mixed-use building.
5237 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
5238
5239 6.8. Business – Local Zone (B-L1).
5240 a. Permitted Uses.
5241 i. Dwellings, or modular home, exclusive of a mobile home, in a single-family or duplex
5242 configuration;
5243 ii. Public open space recreational uses;
5244 iii. Accessory uses and buildings;
5245 iv. Aquaculture;
5246 b. Special Exception Uses.
5247 i. Dwellings in a multi-unit residential configuration; School or educational facility (including
5248 nursery schools), day care facility, eldercare facility, hospital, long-term nursing care facility,
5249 convalescent care facility, municipal, county, or state building or use, church; or any other
5250 institution of educational, religious, philanthropic, fraternal, political or social nature which is not
5251 used for residential occupancy;
5252 ii. Inn;
5253 iii. Home occupation;
5254 iv. Retail business and service establishments, but excluding those of which the principal activity
5255 entails outdoor sales and/or storage;
5256 v. Business and professional offices;
5257 vi. Mass transit station;
5258 vii. Commercial parking lot or parking garage;
5259 viii. Restaurant;
5260 ix. Art studio or gallery;
5261 x. Convenience store, food store, grocery store;
5262 xi. Personal service;
5263 xii. Business service;
5264 xiii. Building materials, but excluding those of which the principal activity entails outdoor sales
5265 and/or storage;
5266 xiv. Garden supply;
5267 xv. Conference center;

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- 5268 xvi. Commercial boating and fishing uses and facilities, provided only incidental cleaning and
5269 cooking of seafood occur at the site;
5270 xvii. Accessory dwelling units;
5271 xviii. Motel, hotel, inn, or rooming house;
5272 xix. Funeral home;
5273 xx. Place of public assembly, including theater;
5274 xxi. Public utility facilities including substation, pumping stations, and sewage treatment facilities.
5275 xxii. Farmer's market;
5276 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
5277
5278 9. Business - Park Zone (B-P).
5279 a. Permitted Uses.
5280 i. The following land uses are permitted for projects that are cluster mixed-use developments:
5281 (a). Art studio/gallery;
5282 (b). Mass transit station;
5283 (c). Public open space recreational uses, recreational facilities, and selected commercial
5284 recreation;
5285 (d). Research and development;
5286 (e). Public utility facilities including substations, pumping stations, and sewage treatment facilities;
5287 ii. The following land uses are permitted for projects that are not cluster mixed-use
5288 developments:
5289 (a). Accessory uses and buildings;
5290 b. Special Exception Uses. The following uses are permitted in a cluster mixed use development
5291 as a special exception:
5292 i. Business and professional offices;
5293 ii. Business services;
5294 iii. Commercial parking lot or parking garage;
5295 iv. Conference center;
5296 v. Cluster residential development;
5297 vi. Grocery, food store, convenience store, including gas station;
5298 vii. Mechanical services, excluding junkyard;
5299 viii. Motel, hotel, rooming house, inn;
5300 ix. Personal service;
5301 x. Place of public assembly, including theater;
5302 xi. Repair services;
5303 xii. Restaurant;
5304 xiii. Retail uses and wholesale businesses excluding used car lots and junkyards;
5305 xiv. School (including day nursery), university, museum, hospital, municipal or state building or
5306 use, church, or any other institution of educational, religious, philanthropic, fraternal, political or
5307 social nature which is not used for residential occupancy;
5308 xv. Shops in pursuit of trade;
5309 xvi. Veterinary hospital;
5310 xvii. Warehousing and storage.
5311 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception
5312 use.

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5313

5314 10. Commercial – 1 Zone (C-1).

5315 a. Permitted Uses.

5316 i. Public open space recreational uses, recreational facilities, and selected commercial
5317 recreation;

5318 ii. School (including nursery school), hospital, long-term nursing care facility, convalescent care
5319 facility, municipal or state building or use, church; or any other institution of educational, religious,
5320 philanthropic, fraternal, political, or social nature which is not used for residential occupancy;

5321 iii. Accessory uses and buildings including minor or major home occupations;

5322 iv. Public utility facilities including substations, pumping stations, and sewage treatment facilities;

5323 b. Special Exception Uses.

5324 i. Day care facility;

5325 ii. Business and professional offices;

5326 iii. Mass transit station;

5327 iv. Commercial parking lot or parking garage;

5328 v. Retail uses and wholesale businesses excluding used car lots and junkyards;

5329 vi. Service establishments;

5330 vii. Restaurant;

5331 viii. Veterinary hospital;

5332 ix. Motel, hotel, rooming house, inn;

5333 x. Art studio/gallery;

5334 xi. Grocery, food store, convenience store;

5335 xii. Business service;

5336 xiii. Personal service;

5337 xiv. Building materials and garden supply;

5338 xv. Conference center;

5339 xvi. Repair services;

5340 xvii. Place of assembly, including theater;

5341 xviii. Transportation terminal excluding truck stops;

5342 xix. Warehousing and storage;

5343 xx. Research and development;

5344 xxi. Mini storage;

5345 xxii. Aquaculture;

5346 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception
5347 use.

5348

5349 11. Commercial – 2 Zone (C-2).

5350 a. Permitted Uses.

5351 i. Public open space recreational uses, recreational facilities, and selected commercial
5352 recreation;

5353 ii. School (including nursery school), hospital, long-term nursing care facility, convalescent care
5354 facility, municipal or state building or use, church; or any other institution of educational, religious,
5355 philanthropic, fraternal, political, or social nature which is not used for residential occupancy;

5356 iii. Accessory uses and buildings including minor or major home occupations;

5357 iv. Public utility facilities including substations, pumping stations, and sewage treatment facilities;

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- 5358 v. Aquaculture.
- 5359 b. Special Exception Uses.
- 5360 i. Commercial parking lot or parking garage;
- 5361 ii. Retail uses and wholesale businesses excluding used car lots and junkyards;
- 5362 iii. Service establishments;
- 5363 iv. Restaurant;
- 5364 v. Business and professional offices;
- 5365 vi. Mass transit station
- 5366 vii. Commercial boating and fishing uses and facilities, provided only incidental cleaning and
- 5367 cooking of seafood occur at the site;
- 5368 viii. Veterinary hospital;
- 5369 ix. Motel, hotel, rooming house, inn;
- 5370 x. Art studio/gallery;
- 5371 xi. Grocery, food store, convenience store;
- 5372 xii. Day care facility;
- 5373 xiii. Business service;
- 5374 xiv. Personal service;
- 5375 xv. Conference center;
- 5376 xvi. Repair services;
- 5377 xvii. Boat yard;
- 5378 xviii. Place of assembly, including theater;
- 5379 xix. Transportation terminal excluding truck stops;
- 5380 xx. Warehousing and storage;
- 5381 xxi. Mini storage;
- 5382 xxii. Research and development;
- 5383 xxiii. Adult entertainment establishment not located within one thousand (1,000) feet of an
- 5384 existing private residence, school or place of worship;
- 5385 xxiv. Shops in pursuit of trade;
- 5386 xxv. Construction services.
- 5387 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception
- 5388 use.
- 5389
- 5390 12. Commercial – 3 Zone (C-3).
- 5391 a. Permitted Uses.
- 5392 i. Public open space recreational uses, recreational facilities, and selected commercial
- 5393 recreation;
- 5394 ii. School (including nursery school), hospital, eldercare facility, long-term nursing care facility,
- 5395 convalescent care facility, municipal or state building or use, church; or any other institution of
- 5396 educational, religious, philanthropic, fraternal, political, or social nature which is not used for
- 5397 residential occupancy;
- 5398 iii. Accessory uses and buildings including minor or major home occupations;
- 5399 iv. Aquaculture.
- 5400 v. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
- 5401 b. Special Exception Uses.
- 5402 i. Business and professional offices;

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- 5403 ii. Mass transit station;
- 5404 iii. Commercial parking lot or parking garage;
- 5405 iv. Retail uses and wholesale businesses excluding used car lots and junkyards;
- 5406 v. Service establishments;
- 5407 vi. Restaurant;
- 5408 vii. Veterinary hospital;
- 5409 viii. Motel, hotel, rooming house, inn;
- 5410 ix. Art studio/gallery;
- 5411 x. Grocery, food store, convenience store;
- 5412 xi. Day care facility;
- 5413 xii. Business service;
- 5414 xiii. Personal service;
- 5415 xiv. Conference center;
- 5416 xv. Boat yard;
- 5417 xvi. Commercial boating and fishing uses and facilities, provided only incidental cleaning and
- 5418 cooking of seafood occur at the site;
- 5419 xvii. Place of assembly, including theater;
- 5420 xviii. Transportation terminal excluding truck stops;
- 5421 xix. Warehousing and storage;
- 5422 xx. Mini storage;
- 5423 xxi. Accessory dwelling unit;
- 5424 xxii. Research and development;
- 5425 xxiii. Construction services.
- 5426 xxiv. Shops in pursuit of trade;
- 5427 xxv. Adult entertainment establishment not located within one thousand (1,000) feet of an
- 5428 existing private residence, school or place of worship;
- 5429 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception
- 5430 use.
- 5431
- 5432 13. Industrial Zone (IND).
- 5433 a. Permitted Uses.
- 5434 i. Research facilities;
- 5435 ii. Accessory uses and buildings including minor or major home occupations.
- 5436 b. Special Exception Uses.
- 5437 i. Manufacturing, processing and treatment;
- 5438 ii. Municipal and governmental uses;
- 5439 iii. Public utility facilities including substations, pumping stations, and sewage treatment plants;
- 5440 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception
- 5441 use.
- 5442
- 5443 14. Mixed Use Zone (MU).
- 5444 a. Permitted Uses.
- 5445 i. Dwellings, limited to the following:
- 5446 (a). Single-family dwellings on lots of record as of April 1, 2004,
- 5447 (b). Dwelling units on the upper floors of a mixed-use building that is served by public sewerage;

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- 5448 ii. Agricultural uses and practices, except a piggery or the raising of poultry for commercial
5449 purposes;
5450 iii. Art studio/gallery;
5451 iv. Church or institution of religion;
5452 v. Research and development;
5453 vi. Public open space or recreation;
5454 vii. Municipal or state building or use;
5455 viii. Institution of philanthropic, fraternal, political, or social nature, which is not used for residential
5456 or overnight occupancy;
5457 ix. Timber harvesting;
5458 x. Home occupations;
5459 b. Special Exception Uses.
5460 i. Business and professional offices;
5461 ii. Boat yard;
5462 iii. Grocery store, food store, convenience store or neighborhood grocery;
5463 iv. Day care facility;
5464 v. Commercial parking lot or garage;
5465 vi. Hospital;
5466 vii. Inn;
5467 viii. Institution of education, which is not used for residential or overnight occupancy;
5468 ix. Mass transit station;
5469 x. Restaurant;
5470 xi. Convalescent care facility, long-term nursing care facility;
5471 xii. Personal services;
5472 xiii. Repair service;
5473 xiv. Selected commercial recreation;
5474 xv. Theater; Veterinary hospital;
5475 xvi. Accessory buildings and uses;
5476 xvii. Retail use, a single use not to exceed fifty thousand (50,000) square feet in gross floor
5477 area;
5478 xviii. Eldercare facility;
5479 xix. Accessory dwelling unit
5480 xx. Housing for elderly as part of a mixed use project;
5481 xxi. Commercial kennel;
5482 xxii. Motel or hotel;
5483 xxiii. Public utility facilities including substations, pumping stations, and sewage treatment
5484 facilities;
5485 xxiv. Shop in pursuit of trades;
5486 xxv. Transportation terminal;
5487 xxvi. Wholesale business;
5488 xxvii. Warehousing/storage;
5489 xxviii. Construction services.
5490 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception
5491 use.
5492

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5493 15 Mixed Use - Badger's Island Zone (MU-BI).

5494 i. Permitted Uses.

5495 ii. Public open space and recreational uses;

5496 iii. Dwellings including modular homes in a single-family or duplex configuration, excluding mobile
5497 homes;

5498 iv. Aquaculture;

5499 v. Research laboratories.

5500 b. Special Exception Uses.

5501 i. Dwellings in a multi-unit residential configuration;

5502 ii. School, municipal or state building or use, church, or any other institution of educational,
5503 religious, philanthropic, fraternal, political or social nature, which is not used for residential
5504 occupancy;

5505 iii. Accessory buildings and uses;

5506 iv. Home occupations;

5507 v. Accessory dwelling unit;

5508 vi. Commercial recreational use;

5509 vii. Place of assembly;

5510 viii. Public utility facilities, including substations, pumping stations, and sewage treatment facilities;

5511 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.

5512

5513 16 Mixed Use- Kittery Foreside Zone (MU-KF).

5514 c. Permitted Uses.

5515 i. Public open space recreational uses;

5516 ii. Dwellings in a single-family or duplex configuration, excluding mobile homes;

5517 d. Special Exception Uses.

5518 i. School (including nursery school), hospital, eldercare facility, long-term nursing care facility,
5519 convalescent care facility, municipal or state building or use, church; or any other institution of
5520 educational, religious, philanthropic, fraternal, political, or social nature which is not used for
5521 residential purposes;

5522 ii. Accessory uses including church rectory;

5523 iii. Home occupation;

5524 iv. Place of assembly;

5525 v. Accessory dwelling unit;

5526 vi. Research and development;

5527 vii. Public utility facilities, including substations, pumping stations, and sewage treatment facilities

5528 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.

5529

5530 E. Standards

5531 1. Principal and Accessory Structures – Setbacks and Development.

5532

5533 a. All new principal and accessory structures (except certain patios and decks per section
5534 16.12.160.E) must be set back as follows:

5535

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i. At least one hundred (100) feet, horizontal distance, from the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any water bodies, or the upland edge of a wetland on the Mixed Use - Badgers Island and the Kittery Foreside Zones, unless modified according to the terms of Section 16.12.160.E. - Standards, except that in the Commercial Fisheries/Maritime Uses Overlay Zone there is no minimum setback requirement. In the Resource Protection Overlay Zone the setback requirement is 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in the zone, in which case the setback requirements specified above apply.

ii. The water body, tributary stream, or wetland setback provision does not apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor does it apply to other functionally water-dependent uses.

b. Accessory patios or decks no larger than five hundred (500) square feet in area must be set back at least seventy-five (75) feet from the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.

c. If there is a bluff, setback measurements for principal structures, water and wetland must be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and Code Enforcement Officer are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant is responsible for the employment a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, or a Maine State Geologist qualified to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.

d. Public access to the waterfront must be discouraged through the use of visually compatible fencing and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer. The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery along the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as an element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in height immediately upon planting.

e. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure must not exceed eighty (80) square feet in area nor eight (8) feet in height, and must be located as far from the shoreline or tributary stream as practical and meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or tributary stream than the existing principal structure.

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f. The lowest floor elevation or openings of all buildings and structures, including basements, must be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils.

g. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:

i. Badgers Island and Kittery Foreside Zones, where the maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot coverage in the Badgers Island district to seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.

ii. Commercial (C1-3), Mixed Use (MU), Business – Local (B-L and B-L-1), and Industrial (IND) Zones where the maximum lot coverage is seventy (70) percent.

Notwithstanding the above limits, non-vegetated surfaces must not exceed fifty (50) percent of the lot area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the Residential - Urban Zone (R-U) and the Shoreland Overlay Zone

h. Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided the:

i. structure is limited to a maximum of four feet in width;

ii. structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S., §480-C); and

ii. applicant demonstrates that no reasonable access alternative exists on the property.

16.3.170 Commercial Fisheries/Maritime Activities (Uses) Overlay Zone OZ-CFMU.

A. Purpose. The purpose of the Commercial Fisheries/Maritime Uses Overlay Zone is to provide for the development and expansion of water-dependent commercial fisheries/maritime activities. Commercial fisheries/maritime activities and other areas suitable for functionally water-dependent uses, considers:

1. shelter from prevailing winds and waves;

2. slope of the land within two hundred fifty (250) feet, horizontal distance, of the normal high-water line;

3. depth of the water within one hundred fifty (150) feet, horizontal distance, of the shoreline;

4. available support facilities including utilities and transportation facilities; and

5. compatibility with adjacent upland uses.

B. Applicability and Boundaries. The provisions of this section apply to all uses, lots and structures within areas where the existing predominant pattern of development is consistent with the allowed uses for this overlay zone, where consistent with dimensional requirements of the underlying base zone, and where the active use of lands, buildings, wharves, piers, floats, docks, or landings with the principal intent of such activity is the production of income by an individual or legal business entity through the operation of a vessel(s) as shown on the Zoning Map. The activity may be either a principal or accessory use as defined in this Code.

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C. Permitted Uses.

1. Functionally water dependent commercial fisheries/marine uses.

D. Special Exception Uses.

1. Not applicable

E. Prohibited Uses.

All permitted uses in the base zones including R-KPV, R-U, R-S, IND, and MU-KF except as permitted herein.

F. Standards.

1. Dimensional standards of the underlying base and overlay zone(s).

16.3.190 Resource Protection Overlay Zone OZ-RP.

A. Purpose. The purposes of this zone are to further the maintenance of safe and healthful conditions; prevent and control potential water pollution sources; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; and conserve shore cover, visual as well as actual point of access to inland and coastal waters and natural beauty.

B. Applicability and Boundaries. The provisions of this section apply to all uses, lots and structures within areas where the existing conservation and accessory development is consistent with the allowed uses for this zone. The Resource Protection Overlay Zone includes areas where development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This includes the following areas when they also occur within the limits of the Shoreland Overlay Zone, exclusive of a Stream Protection Area; except currently developed areas and areas that meet the criteria for Commercial Fisheries/Maritime Uses:

1. Waterfowl and Wading Bird Habitat/Water Body Related Wetland Areas - Land areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of May 1, 2006 or later. For the purposes of this section "wetlands associated with rivers" means: areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a river, and have a surface elevation at or below the water level of the river during the period of normal high water. "Wetlands associated with rivers" are considered to be part of that river.

2. Steep Slope Areas

- a. Land areas that have two or more contiguous acres of land where the slopes are 20% or greater; and
- b. Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement, and

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c. Land adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

3. Independent Wetland Areas. Land areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

4. Floodplain Areas

a. This includes floodplains along rivers defined by the 100 year floodplain as designated on the FEMA Flood

b. Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils.

C. Land Uses. Land uses within each base zone that are overlaid by the Resource Protection Overlay Zone include:

1. Residential - Rural Zone (R-R).

a. Permitted Uses.

i. Public open space recreational uses.

ii. Individual private campsite.

b. Special Exception Uses.

i. Dwellings, or modular home, exclusive of a mobile home, in a single-family or duplex configuration;

ii. School or other institution of educational, religious, philanthropic, fraternal or social nature which is not used for residential occupancy, less than 6,000 square feet;

iii. Any agricultural building or use, except sawmill, piggery, or the raising of poultry for commercial purposes;

iv. Accessory use and building;

vi. Home occupation;

vii. Accessory dwelling unit;

viii. Public utility facilities including substation, pumping stations and sewage treatment facilities.

c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.

2. Residential – Suburban Zone (R-S).

a. Permitted Uses.:

i. Public open space recreational uses.

b. Special Exception Uses.

i. Dwellings, in a single-family or duplex configuration;

ii. School or educational facility (including nursery schools), eldercare facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building or use, church; or other institution of educational, religious, philanthropic, fraternal, political, or social nature which is not used for residential occupancy. Any single listed use may not occupy more than five thousand (5,000) square feet of floor area;

iii. Agricultural building or use, except sawmill, piggery, or the raising of poultry for commercial purposes;

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- 5715 iv. Accessory use and building;
5716 v. Home occupation;
5717 vi. Accessory dwelling unit;
5718 vii. Public utility facilities including substation, pumping stations and sewage treatment facilities;
5719 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
5720
5721 3. Residential - Kittery Point Village Zone (R-KPV).
5722 a. Permitted Uses.
5723 i. Public open space recreational uses.
5724 b. Special Exception Uses.
5725 i. Dwellings, excluding mobile homes, in a single-family or duplex configuration;
5726 ii. School or educational facility (including nursery schools), church; or other institution of
5727 educational, religious, philanthropic, fraternal, political, or social nature which is not used for
5728 residential occupancy. Any single listed use may not occupy more than five thousand (5,000) square
5729 feet of floor area;
5730 iii. Any agricultural building or use, except a sawmill, piggery, or the raising of poultry for commercial
5731 purposes;
5732 iv. Accessory uses and buildings;
5733 v. Home occupations;
5734 vi. Accessory dwelling unit.
5735 vii. Public utility facilities including substation, pumping stations and sewage treatment facilities;
5736 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
5737
5738 4. Residential – Urban Zone (R-U).
5739 a. Permitted Uses.
5740 i. Public open space recreational uses.
5741 b. Special Exception Uses.
5742 i. Dwellings and manufactured housing in a single-family or duplex configuration;
5743 ii. School or educational facility (including nursery schools), church; or other institution of
5744 educational, religious, philanthropic, fraternal, political, or social nature which is not used for
5745 residential occupancy. Any single listed use may not occupy more than five thousand (5,000) square
5746 feet of floor area;
5747 iii. Accessory uses and buildings;
5748 iv. Home occupations.
5749 v. Accessory dwelling unit;
5750 vi. Public and private recreational uses exclusive of drive-in theaters;
5751 vii. Public utility facilities including substation, pumping stations and sewage treatment facilities.
5752 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
5753
5754 5. Residential - Village Zone (R-V).
5755 a. Permitted Uses.
5756 i. Public open space recreational uses.
5757 b. Special Exception Uses.
5758 i. Dwellings including modular homes in a single-family or duplex configuration, excluding mobile
5759 homes;

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- 5760 ii. Accessory buildings and structures;
5761 iii. Home occupations;
5762 iv. Accessory dwelling units;
5763 v. Public utilities including substation, pumping stations and sewage treatment facilities.
5764 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
5765
5766 6. Residential – Rural Conservation Zone (R-RC).
5767 a. Permitted Uses.
5768 i. Timber harvesting;
5769 ii. Public recreation;
5770 b. Special Exception Uses.
5771 i. Dwellings including modular homes in a single-family or duplex configuration, excluding mobile
5772 homes;
5773 ii. Any agricultural building or use except sawmill, piggery, or the raising of poultry for commercial
5774 purposes;
5775 iii. Accessory uses and buildings;
5776 iv. Home occupations.
5777 v. Accessory dwelling unit;
5778 vi. School, municipal building or use; or any other institution of educational, religious, philanthropic,
5779 fraternal, or social nature which is not used for residential occupancy;
5780 vii. Public and private open space recreational uses exclusive of drive-in theaters;
5781 viii. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
5782 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
5783
5784 7. Business – Local (B-L).Permitted Uses.
5785 a. Permitted Uses.
5786 i. Public open space recreational uses.
5787 b. Special Exception Uses.
5788 i. Dwellings including modular homes in a single-family or duplex configuration, excluding mobile
5789 homes;
5790 ii. School or educational facility (including nursery schools), day care facility, eldercare facility,
5791 hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building
5792 or use, church; or any other institution of educational, religious, philanthropic, fraternal, political or
5793 social nature which is not used for residential occupancy;
5794 iii. Accessory uses and buildings;
5795 iv. Home occupations;
5796 v. Aquaculture;
5797 vi. Accessory dwelling unit;
5798 vii. Place of public assembly;
5799 viii. Public utility facilities including substation, pumping stations, and sewage treatment facilities.
5800 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
5801
5802 8. Business – Local Zone (B-L1).
5803 a. Permitted Uses.
5804 i. Public open space recreational uses.

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b. Special Exception Uses.

i. Dwellings including modular homes in a single-family or duplex configuration, excluding mobile homes;

ii. School or educational facility (including nursery schools), day care facility, eldercare facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political or social nature which is not used for residential occupancy;

iii. Accessory uses and buildings;

iv. Home occupation;

v. Accessory dwelling unit;

vi. Place of public assembly;

vii. Public utility facilities including substation, pumping stations, and sewage treatment facilities;

viii. Farmer's market.

c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.

9. Business – Park Zone (B-P).

a. Permitted Uses – Cluster and Non-Cluster Development.

i. Public open space recreational use.

b. Special Exception Uses -- Cluster Development.

i. Cluster residential development, limited to single family or duplex configuration;

ii. Place of public assembly;

iii. Recreational facilities, and selected commercial recreation;

iv. Public utility facilities including substations, pumping stations, and sewage treatment facilities;

v. Research and development;

vi. School (including day nursery), university, museum, hospital, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature which is not used for residential occupancy;

c. Special Exception Uses - Non-Cluster. Special exceptions uses for projects not designed as a cluster mixed-use development include:

i. Accessory uses and buildings;

d. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.

10. Commercial – 1 Zone (C-1).

a. Permitted Uses.

i. Public open space recreational uses;

b. Special Exception Uses.

i. Recreational facilities, and selected commercial recreation;

ii. School (including nursery school), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature which is not used for residential occupancy;

iii. Accessory uses and buildings;

iv. Home occupation;

v. Public utility facilities including substations, pumping stations, and sewage treatment facilities;

vi. Service establishments;

vii. Place of assembly;

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- 5850 viii. Research and development;
5851 ix. Aquaculture.
5852 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
5853
5854 11. Commercial – 2 Zone (C-2).
5855 a. Permitted Uses.
5856 i. Public open space recreational uses, recreational facilities, and selected commercial recreation;
5857 b. Special Exception Uses.
5858 i. School (including nursery school), hospital, long-term nursing care facility, convalescent care
5859 facility, municipal or state building or use, church; or any other institution of educational, religious,
5860 philanthropic, fraternal, political, or social nature which is not used for residential occupancy;
5861 ii. Accessory uses and buildings including minor or major home occupations;
5862 iii. Home occupation;
5863 iv. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
5864 v. Aquaculture;
5865 vi. Place of assembly;
5866 vii. Research and development;
5867 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
5868
5869 12. Commercial – 3 Zone (C-3).
5870 a. Permitted Uses.
5871 i. Public open space recreational uses, recreational facilities, and selected commercial recreation;
5872 b. Special Exception Uses.
5873 i. School (including nursery school), hospital, eldercare facility, long-term nursing care facility,
5874 convalescent care facility, municipal or state building or use, church; or any other institution of
5875 educational, religious, philanthropic, fraternal, political, or social nature which is not used for
5876 residential occupancy;
5877 ii. Accessory uses and buildings;
5878 iii. Home Occupation;
5879 iv. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
5880 v. Accessory dwelling unit;
5881 vi. Aquaculture;
5882 vii. Place of assembly;
5883 viii. Research and development.
5884 c. Prohibited Uses. Prohibited use is any use listed as a permitted or special exception use.
5885
5886 13. Industrial Zone (IND).
5887 a. Permitted Uses.
5888 i. Research facilities.
5889 b. Special Exception Uses.
5890 i. Accessory uses and buildings;
5891 ii. Home occupations.
5892 iii. Municipal and governmental uses;
5893 iv. Public utility facilities including substations, pumping stations, and sewage treatment plants.
5894 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.

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5896 14. Mixed Use Zone (MU).

5897 a. Permitted Uses.

5898 i. Public open space or recreation;

5899 ii. Research and development;

5900 iii. Timber harvesting.

5901 b. Special Exception Uses.

5902 i. Dwellings, limited to the following:

5903 (a). Single-family dwelling on lots of record as of April 1, 2004;

5904 (b). A maximum of two (2) dwelling units, on the upper floors of a mixed-use building that is served by
5905 public sewerage;

5906 ii. Any agricultural building or use except sawmill, piggery, or the raising of poultry for commercial
5907 purposes;

5908 iii. Municipal or state building or use;

5909 iv. Institution of education, which is not used for residential or overnight occupancy;

5910 v. Institution of philanthropic, fraternal, political, or social nature, which is not used for residential or
5911 overnight occupancy;

5912 vi. Commercial recreation;

5913 vii. Accessory uses and buildings;

5914 viii. Home occupations;

5915 ix. Accessory dwelling unit;

5916 x. Campground;

5917 xi. Public utility facilities including substations, pumping stations, and sewage treatment facilities.

5918 c. Prohibited Uses. Prohibited use is any use listed as a permitted or special exception use.

5919

5920 15. Mixed Use - Badger's Island Zone (MU-BI).

5921 a. Permitted Uses. Permitted land uses include:

5922 i. Public open space and recreational uses;

5923 ii. Aquaculture;

5924 iii. Research laboratories.

5925 b. Special Exception Uses. Special exception land uses include:

5926 i. Dwellings including modular homes in a single-family or duplex configuration, excluding mobile
5927 homes;

5928 ii. School, municipal or state building or use, church, or any other institution of educational,
5929 religious, philanthropic, fraternal, political or social nature, which is not used for residential occupancy;

5930 iii. Accessory buildings and uses;

5931 iv. Home occupations;

5932 v. Accessory dwelling unit;

5933 vi. Commercial recreational use;

5934 vii. Place of assembly;

5935 viii. Public utility facilities, including substations, pumping stations, and sewage treatment facilities;

5936 c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.

5937

5938 16. Mixed Use- Kittery Foreside Zone (MU-KF).

5939 a. Permitted Uses. Permitted land uses include:

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i. Public open space recreational uses;

b. Special Exception Uses. Special exception land uses include:

i. Dwellings in a single-family or duplex configuration, excluding mobile homes;

ii. School (including nursery school), hospital, eldercare facility, long-term nursing care facility, convalescent care facility, municipal or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature which is not used for residential occupancy;

iii. Accessory uses including church rectory;

iv. Home occupation;

v. Place of assembly;

vi. Accessory dwelling unit;

vii. Research and development;

viii. Public utility facilities, including substations, pumping stations, and sewage treatment facilities.

c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.

D. Standards.

1. The Design and Performance Standards of Chapters 16.32 and 16.34 and Shoreland Overlay Zone provisions of Section 16.12.160 apply where applicable in addition to the following standards whichever is the most restrictive.

2. Dimensional standards such as front, side and rear yards, building coverage, height and the like are the same as those in the underlying zone.

3. Road construction and parking facilities are allowed in the Resource Protection Overlay Zone only where no reasonable alternative route or location is available outside the Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan approval is required by the Planning Board.

4. Clearing or removal of vegetation for uses, other than timber harvesting as limited per section 16.32. Design and Performance Standards, in a Resource Protection Overlay Zone, is prohibited within the strip of land extending one hundred (100) feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere, in a Resource Protection Overlay Zone the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection Overlay Zone.

16.3.200 Transportation – Maine Turnpike T-MT

A. Purpose. The purpose of the Transportation – Maine Turnpike Zone (T-MT) is to provide for the safe, effective, efficient and environmentally compatible use of the right-of-way owned and operated by the Maine Department of Transportation and the Maine Turnpike Authority as authorized by the State as well as for safe and environmentally compatible buffering for the adjacent land uses along the right-of-way.

B. Permitted and Special Exception Uses. Permitted and special exception land uses include the highway, information center and other uses as authorized by the State.

C. Standards.

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1. The Design and Performance Standards of Chapter 16.32 and Shoreland and Resource Protection Overlay Zones where applicable.

2. Dimensional standards:

<u>Minimum land area per dwelling unit</u>	<u>Not applicable</u>
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<u>Minimum lot size</u>	<u>Not applicable</u>
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<u>Minimum street frontage</u>	<u>Not applicable</u>
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<u>Minimum front yard</u>	<u>Not applicable</u>
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<u>Maximum building coverage</u>	<u>Not applicable</u>
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<u>Minimum rear and side yards</u>	<u>Not applicable</u>
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<u>Maximum building height</u>	<u>35 feet</u>
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Minimum setback from streams, water bodies and wetlands in accordance with Table 16.34 at the end of 16.34 and Section 16.12.160E.

<u>Minimum distance between principal buildings on the same lot</u>	<u>Not applicable.</u>
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<u>Minimum setback from water bodies and wetlands:</u>	<u>Not applicable.</u>
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Chapter 16.16

ADMINISTRATION AND ENFORCEMENT

Sections:

~~16.16.4.010 Purpose.~~

~~16.16.4.020 Town planner.~~

~~16.16.4.030 Code enforcement officer (CEO).~~

~~16.16.4.040 Enforcement General.~~

~~16.16.4.050 Violations and enforcement.~~

~~16.16.4.060 Other enforcement provisions.~~

~~16.16.4.070 Release of performance guaranty.~~

~~16.16.4.0101~~ Purpose.

This chapter describes general administration and enforcement of the requirements of this title.
(~~Land use and dev. code § 4.1, 1994~~)

~~16.16.4.0202~~ Town planner.

A. Responsibilities. The town planner is responsible for the overall planning in accordance with applicable federal, state and municipal law, codes and ordinances. The planner is responsible for all municipal planning functions, including the administration of this title, and the implementation of the Kittery comprehensive plans. These functions include land and water use planning; providing technical assistance and staff support to the planning board; researching, developing, coordinating and administering land/water use and planning related projects; maintaining accurate planning records; and, interacting with members of the public involved with the planning process.

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B. Plan Submission.

1. All plan submission requirements for an application for land/water area use and development ~~shall are to be~~ submitted to the planner.

2. The planner ~~shall must~~ review all plan submission contents to ascertain that they meet the requirements of this code before they are delivered for review or consideration by the planning board.

3. The planner, upon acceptance of a plan, ~~shall is to~~ place the application on the board's agenda for a scheduling hearing.

NOTE: Planner acceptance does not constitute substantive review under Maine law, which commences at the first public hearing for an application held by the planning board.

C. Staff Coordination. The planner ~~shall is to~~ coordinate with appropriate municipal department heads to insure that they have received required project information for the performance of their duties under this title.

D. Reporting. The planner ~~shall must~~ report the status of all active plans (received, pending, under review, and approved not built—past expiration date) to the board, monthly.

E. Business Occupancy Changes. The planner, ~~with and~~ the code enforcement officer, ~~shall are to~~ review and approve, or refer to the planning board for action all business occupancy changes which occur that fall below planning board review thresholds as outlined in subsections D, E and F of Section 16-28.7.260. Approval ~~shall must~~ be based on compliance with all requirements of this title. (~~Land use and dev. code § 4.2, 1994~~)

~~16-16.4.0303~~ 16-16.4.0303 Code enforcement officer (CEO).

A. Responsibility. It ~~shall be is~~ the duty of the code enforcement officer or other person duly authorized by the town to enforce the provisions of this title.

B. Permits. The CEO ~~shall is to~~ issue required permits for building, occupancy, plumbing, electrical or such other as may be required.

C. Appeal Initiation. The CEO ~~shall must~~ initiate the forms required for appeals to the ~~zoning~~ board of appeals.

D. Inspection. The CEO ~~shall must~~ inspect all buildings, developments, subdivisions, and such other facilities/uses falling within the requirements of this title.

E. Business Occupancy Changes. The CEO, ~~with and~~ the town planner, ~~shall are to~~ review and approve or refer to the planning board for action, all business occupancy changes which occur

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that fall below planning board review thresholds as outlined in subsections D, E and F of Section 16-28-7.260. Approval ~~shall~~must be based on compliance with all requirements of this title. (~~Land use and dev. code § 4.3, 1994~~)

~~16-16-4.0404~~ Enforcement—General.

If the code enforcement officer (CEO) finds that any of the provisions of this title or Chapter 8.10 Nonstormwater Discharge Ordinance as applicable are being violated, it is the duty of the CEO to notify by certified mail, return receipt requested, the person responsible for such violations, indicating the nature of the violation, and ordering the action necessary to correct it. It is the duty of the CEO to order discontinuance of illegal use of land, buildings or structures, removal of illegal buildings or structures or of additions, alterations or structural changes thereto; a discontinuance of any illegal work being done; or take any other action authorized by this title to insure compliance with or to prevent violations of its provisions.

A. Inspection of Required Improvements.

1. At least five days prior to commencing each major phase of construction of required improvements, the applicant or duly authorized representative ~~shall~~must notify the CEO, in writing, of the time when construction of such improvements is proposed to commence, so that inspection may be made to ensure that all specifications are met during the construction of the required improvements, and to insure the satisfactory completion of improvements and utilities required by the board.

2. If the inspecting official finds, upon inspection of the required improvements, that any of the required improvements have not been constructed in accordance with the board approved-plans and specifications filed by the developer, it is the duty of the inspecting official to report, in writing, to the planning board, CEO and the developer. The town shall take any steps necessary to preserve the municipality's rights.

B. Modifications to Approved Plans.

1. If, at any time, before or during the construction of the required improvements, it appears necessary or desirable to the developer to modify the required improvements, the CEO and the town planner are authorized to approve minor changes occurring due to such unforeseen circumstances (e.g., encouraging hidden outcrops of bedrock or natural springs). The CEO and the town planner may issue such approvals in writing to the developer, and provide a copy to the board. The developer ~~shall~~must provide revised plans to the town planner.

2. Planning board approval is required for major modifications (e.g., relocations of principal structures, rights-of-way, or property boundaries; changes of grade by more than one percent).

3. It is the duty of the Code Enforcement Officer to keep a complete record of all essential transactions of development in the Shoreland and Resource Protection Overlay Zones, including applications submitted, permits granted or denied, variances granted or denied, revocation

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actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record must be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

C. Stormwater and Erosion Control Inspection.

1. During October-November of each year in which construction for grading, paving and landscaping occurs on a development site, the town will, at the expense of the developer, cause the site to be inspected by a qualified individual. By December 1st, the inspector must submit a site report to the Town Planner that describes the inspection findings and indicates whether stormwater and erosion control measures (both temporary and permanent) are in place and properly installed. The report must include a discussion and recommendation on any and all problem areas encountered.

2. After major construction activities have been completed on a development site, the developer must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer per section 16.32.395, Post-Construction Stormwater Management.

D. Subdivision Lot Sale Monumentation. Prior to the sale of any approved subdivision lot, the subdivider ~~shall~~must provide the planner with a letter from a registered land surveyor, stating that all monumentation shown on the plan has been installed.

E. Street Acceptance as Town Way. Upon completion of construction of any street/road intended for proposal for acceptance as a town way, a written certification that such way meets or exceeds the design and construction standards of this title, signed by a professional engineer registered by the state of Maine, prepared at the developer's expense, must be submitted to the board. If underground utilities are laid in such way, the developer ~~shall~~must also provide written certification from the servicing utility(ies), that such installation was in a manner acceptable to the utility. The board ~~shall~~is to review the proposal and forward a recommendation to the town council regarding acceptance.

F. Maintenance of Improvements. The developer is required to maintain all improvements and provide for snow removal on streets and sidewalks unless and until the improvement has been accepted by the town council.

G. Subdivision Plan Filing, Recording. Prior to recordation of a subdivision plan in the York County registry of deeds, the subdivider must have acquired planning board approval in accordance with this title.

H. Subdivision Land Conveyance. No person, firm, corporation, or other legal entity may convey, offer, or agree to convey any land in a subdivision which has not been approved by the board and recorded in the York County registry of deeds. No person, firm, corporation, or other legal entity may convey, offer, or agree to convey any land in a subdivision which is not shown on the final plan as a separate lot.

I. Subdivision Frontage Street Completion. No lot in a subdivision may be sold, leased, or otherwise conveyed before the street upon which such lot has frontage, is completed to rough grade standard, up to, and including the entire frontage of the lot. Prior to the issuance of

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certificates of occupancy by the CEO, the street from which the unit is accessed must be completed in accordance with Chapter 16-32-8.

J. Utility Service. Prior to the installation of any public utility to a site, the developer must have obtained all necessary approvals from the appropriate local, state or federal authority.

K. Removal of Fire Debris or Other Ruins. The accumulation and or storage of hazardous materials and/or chemicals, refuse, junk cars or other ruins constitutes a violation. When a violation is discovered, the code enforcement office will order compliance by written notice of violation to the owner of any land in any zoning district requesting removal of such violation within six months of the date of written notice. An extension of time to correct may be made by the CEO for good and sufficient reason.

L. Grading/Construction Final Plan Required. Grading or construction of roads, grading of land or lots, or construction of buildings which require a final plan as provided in this title, until such time as the final plan has been duly prepared, submitted, reviewed, approved and endorsed as provided in this title, is prohibited until the original copy of the final plan so approved and endorsed has been duly recorded in the York County registry of deeds.

M. Nonstormwater Discharge. No person, except where exempted in Section 8.10.0505, will may create, initiate, originate or maintain a nonstormwater discharge to the storm drainage system. Such nonstormwater discharges are prohibited notwithstanding the fact that the municipality may have approved the connections, drains or conveyances by which a person discharges unallowable nonstormwater discharges to the storm drainage system. (~~Ord. 10-08 (part): land use and dev. code § 4.4, 1994~~)

N. Nuisances. Any violation of this Code is deemed to be a nuisance.

~~16-16-4.0505~~ 4.0505 Violations and enforcement.

When any violation of any provision of this title or Chapter 8.10 Nonstormwater Discharge Ordinance ~~as is~~ found to exist, the town attorney, or the CEO as provided by MRCP Rule 80K and any provisions of this title and relevant statute, with the advice and consent of the town manager, are authorized and directed to institute any and all appropriate actions and proceedings either legal or equitable that may be appropriate or necessary for the enforcement of the provisions of this title, the same to be brought in the name of the town.

A. Owner or Persons Liable. Any person(s), firm, corporation, or legal entity being the owner of or having control or use of any buildings or premises, who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this title is responsible for the violation and is subject to the penalties and the remedies herein provided.

B. Applications for Permits or Approvals Involving Sites with a Violation of this Title. An application for a "building/regulated activity permit" (see Chapter 16.20), certificate of occupancy

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permit, sign permit, subdivision approval or development review approval will be denied for any property where a violation exists until such violation has been corrected or resolved.

C. Purpose of Enforcement Provisions. The purpose of these title enforcement provisions is to provide an alternative method in addition to Section 16-16.4.0404 for enforcing and securing compliance with the provisions of this title in a just, speedy and cost-effective manner, and thereby to protect, preserve and enhance the public health, safety and general welfare.

D. Notice of Violation and Order (Notice). It is the duty of the CEO to serve written notice on the landowner, or the landowner's agent, and any other person(s) or entity(s) responsible (hereafter termed "violation") for such violation. The notice must describe the nature of the violation, include a specific reference to the provision(s) of this title and/or state statute violated, and direct the discontinuance of the illegal action or condition. The notice must also contain an order setting forth the action necessary to correct the violation specifying a time period for correction as provided in subsection H of this section and must set forth a fine to be imposed as authorized by subsection 1 of this section and/or 30-A M.R.S. ~~§Section-4452~~. Notwithstanding any other provision of this section, when the notice involves a violation of Section 16-32.8.490 of this chapter or 30-A M.R.S., ~~§Section-4452(3)~~, the notice must also set forth, in addition to the fine to be imposed, an order of remediation or other corrective action(s) consistent with and in compliance with 30-A M.R.S. ~~§Section-4452~~ deemed necessary by the CEO to correct or mitigate the violation to the affected area(s) unless the correction or mitigation would result in a threat or hazard to public health or safety, substantial environmental damage, or a substantial injustice.

All proposed plans for corrective action submitted by the violator must comply with the standards set forth in Section 16-32.8.490 where applicable and 30-A M.R.S. ~~§Section-4452(3)~~. The acceptance by the CEO of a violator's proposed plan(s) of correction or mitigation will not relieve the violator of the requirement to pay the fine set forth in the notice.

The notice must also advise the violator of any right to appeal to the ~~zoning~~-board of appeals with respect to the CEO's determination that a violation of this title and/or 30-A M.R.S. ~~§Section-4452~~ exists for which the violator is responsible.

Additionally, if there is a violation of Chapter 8.10, the enforcement authority will order compliance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

1. The elimination of nonstormwater discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS-4;
2. The cessation of discharge practices, or operations in violation of this section;
3. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of nonstormwater discharges to the storm drainage system and the restoration of any affected property; and/or

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4. The payment of fines, of the municipality's remediation costs and of the municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation and/or restoration of affected property is required, the notice will set forth a deadline within which such abatement or restoration must be completed.

E. Procedure to Serve Notice of Violation and Order. The notice pursuant to subsection D of this section must either:

1. Be served in hand to the violator by the CEO or a person duly authorized by the CEO;

2. Be left at the violator's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein or with an agent authorized by appointment or by law to receive service of process;

3. Be mailed by certified U.S. mail, return receipt requested, to the violator's last known address. If the return receipt is not returned, the notice will be conclusively presumed to have been served. Such notice sent by regular U.S. mail if not returned or undeliverable is conclusively deemed to be received by the addressee on the fifth day following the date of mailing; or

4. Any procedure for service of process authorized by Rule 4 of the Maine Rules of Civil Procedure (MRCP).

F. Appeal of Notice of Violation and Order. The violator served with a notice of violation and order may appeal the notice of violation and order to the ~~zoning~~-board of appeals by filing an administrative appeal application in accordance with Section 16-24-~~6.0505~~(A)(2). If a completed appeal is not filed within thirty (30) days of receipt of the violation and order, then the notice of violation and order is final and the violator is subject to the penalty contained therein. If a completed appeal application is timely filed, the ~~zoning~~-board of appeals (ZBABOA) must hold a public hearing pursuant to Section 16-24-~~6.0505~~(B) and render a decision to uphold, modify or reverse the violation notice and order issued by the CEO. The board must set forth its findings of fact and conclusions of law in support of its decision and give notice of the same to the violator.

Any adverse decision of the ZBABOA may be further appealed to the Superior Court pursuant to the provisions of Rule 80(B) of the Maine Rules of Civil Procedure (MRCP). If a timely appeal is taken, the notice of violation and order is stayed. If no appeal is taken, or any appeal once taken is withdrawn or not pursued, the violation notice and order is final and enforceable as provided in the title.

G. Civil Proceedings. If the notice of violation and order has not been corrected, and no appeal is pending before the ZBABOA or Superior Court, or the parties have not reached a consent agreement as provided in subsection J of this section, the town attorney, or the CEO as provided by MRCP Rule 80K, upon notice from the town manager, may initiate any and all appropriate legal proceedings authorized in this title or state statute to compel the violator to correct the violation, pay any fine imposed, and seek whatever other relief to which the town may

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be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to MRCP Rule 80K and 30-A M.R.S., ~~§Section 4452~~ et seq., as amended.

H. Time Limit for Corrective Action. The time period within which a violation must be corrected as set forth in the notice of violation and order under subsection D of this section is thirty (30) days following receipt of the notice of the violation and order unless:

1. The CEO determines that a longer reasonable time limit is necessary considering the nature and extent of the work required to correct the violation.

2. The CEO determines that a shorter reasonable time limit is appropriate due to the threat posed by said violation to the health, safety and welfare of the public.

3. The CEO finds that the violator has been previously served a notice of violation and order for a similar violation within the last eighteen (18) months, in which case the time limit for corrective action must be no more than five days.

If a violator in a timely fashion files a completed administrative appeal application with the town clerk as provided in subsection F of this section, any period of time from date of receipt of such an appeal to date of decision of the ~~ZBABOA~~ inclusive, is not counted as part of the cumulative time period described in this section. If the ~~ZBABOA~~ upholds the CEO's determination, the time line set forth in the notice of violation and order resumes beginning the day after the decision is rendered unless it is extended by the ~~ZBABOA~~.

I. Penalties. The Code Enforcement Officer must impose the following penalties for the failure to correct a cited violation within the prescribed time set forth in the Notice:

Fine imposed: \$200.00 for the first seven day period the violation continues beyond the time specified for corrective action. Thereafter, each day the violation continues, a separate and specific violation with an additional minimum of \$100.00 per day penalty for each day of the continuing violation up to a maximum penalty imposed of \$2,500.00 for each specific violation or the maximum as provided by 30-A M.R.S. §-4452, if greater. When the Violation set forth in the Notice involves any cutting of tree(s) or other vegetation in violation of Chapter 16.34, Shoreland Zoning or 30-A M.R.S. §-4452(3), the penalty provided by this section will be imposed from the date of notification of the violation in writing in addition to the required corrective action set forth in the Section 16.16.050 (D).

After the time specified to correct the violation in the notice of violation and order passes, it is the responsibility of the violator to inform the Code Enforcement Officer in writing when the violation has been corrected and seek an inspection to verify the violation has been corrected. For the purposes of this section, the violation will be assumed to have continued to exist uncorrected until the violator has informed the Code Enforcement Officer in writing that the violation has been corrected or the Code Enforcement Officer discovers through a ~~routine~~ inspection of the premises that the violation has been corrected, whichever comes earlier.

J. Consent Agreements. In special cases, particularly minor, unintentional violations that are unduly difficult to correct, the town manager, with advice of the code enforcement officer, is

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authorized to enter into a consent agreement with the violator to resolve the violation without further enforcement action or appeal. Consent agreements are not intended to allow a violator to substitute fines for corrective actions.

Any such violation that is allowed to continue pursuant to a consent agreement is not granted the status of a nonconforming use. Any further actions by the violator with regard to the property must comply in all respects to the existing terms and provisions of this title.

K. Payment of Civil Penalties. All civil penalties imposed pursuant to a notice of violation and order as provided in subsection D of this section are payable to the town and due within thirty (30) days after the notice of violation and order becomes final. All such civil penalties not paid when due accrue interest on the unpaid penalties at the rate provided for judgments in ~~M.R.S. Title 14, Section 1602-A~~ M.R.S. § 1602-A. If the violator fails to pay this penalty, the penalty may be recovered by the town in a civil action in the nature of debt. ~~(Ord. 10-08 (part); Ord. 2-95 (part); land use and dev. code § 4.5)~~

L. Fines. Any person, including but not limited to a property owner, an owner's agent or a contractor, who violates any provision or requirement of this Code will be penalized in accordance with this Code and 30-A, M.R.S., §4452.

~~16-16.4.0606~~ Other enforcement provisions.

In addition to the violations and enforcement provisions of Sections ~~16-16.4.0404~~ and ~~16-16.4.0505~~, any person, firm, corporation, or legal entity being the owner of or having control or use of any buildings or premises who violates any of the provisions of this title, or any notice of violation and order issued by the CEO, ~~shall be~~ is guilty of a civil violation and the town ~~shall have~~ has those remedies including fines as are provided and allowed by ~~M.R.S. Title 30-A, M.R.S., §4452~~ M.R.S. Title 30-A, M.R.S., §4452, as amended. Each day such violation is permitted to exist after notification thereof ~~shall constitute~~ constitutes a separate offense. All enforcement actions ~~shall be~~ are to be brought in the name of the town. All fines collected hereunder ~~shall~~ accrue to the town. ~~(Ord. 2-95 (part); land use and dev. code § 4.6)~~

~~16-16.4.0707~~ Release of performance guaranty.

Before a developer may be released from any obligation required by guaranty of performance, the board ~~shall~~ must require certification from the CEO, or appointed engineer and whatever other agencies and departments that may be involved, to the effect that all improvements have been satisfactorily completed in accordance with all applicable standards, state and local codes and the approved plans. ~~(Land use and dev. code § 4.7, 1994)~~

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Chapter 16.205

BUILDING/REGULATED ACTIVITY PERMITS

Sections:

~~16.20.5.010 Purpose.~~

~~16.20.5.020 Requirements.~~

~~16.20.5.030 Application.~~

~~16.20.5.040 Certificate of occupancy.~~

~~16.20.5.050 Provision for temporary housing.~~

~~16.20.5.060 Mobilehome~~ **Mobile home** parks, seasonal trailer parks and campgrounds.

~~16.20.5.010~~ 1 Purpose.

Building/regulated activity permits and certificates of occupancy are required to control development in Kittery to insure that such development conforms to this code. This chapter outlines the requirements of this process. (~~Land use and dev. code § 5.1, 1994~~)

~~16.20.5.020~~ 2 Requirements.

A. Permit. No building, including municipal buildings, or structure ~~shall~~ may be erected, moved, added to or otherwise structurally altered and no regulated activity ~~shall~~ is to commence without a permit therefor, issued by the code enforcement officer and in compliance with all applicable state and federal requirements.

B. Conformity. No building/regulated activity permit ~~shall~~ may be issued except in conformity with this title, except after written order of the ~~zoning~~ board of appeals.

C. Permit Records. The CEO ~~shall~~ must maintain a public record of all building/regulated activity permits and applications thereof.

D. Permit Period. A permit ~~expires if for which~~ no substantial work has been commenced within six months from date of issue ~~shall~~ expire. A permit ~~expires if for which~~ work is not substantially complete within two years from date of issue ~~shall~~ expire. Expired permits may be renewed upon application and payment of a renewal fee.

E. Permit Threshold. A permit is required if the activity triggers any of the following thresholds as determined by the Code Enforcement Officer:

1. the fair market value of the work is greater than two thousand dollars (\$2,000.00);
2. involves changes to electric, plumbing or septic systems;
3. results in an increase in coverage;
4. involves the construction of a building or expansion of a structure;
5. involves a structural alteration;
6. involves a change in use or new business occupancy;
7. involves the erection or expansion of signage;

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8. involves the installation or expansion of piers and docks;
9. involves an activity that requires inspection by the Code Enforcement Officer to determine compliance with this title; or
10. creates one or more acres of disturbed area.

~~(Land use and dev. Code § 5.2, 1994)~~

~~16-20.~~ 5.0303 Application.

A. Plans.

1. All applications for building/regulated activity permits ~~shall~~ are to be accompanied by plans showing the actual dimensions and shape of the lot to be built upon, including but not limited to property and setback lines; the exact sizes and locations and dimensions of the proposed building or alteration of any existing structures and the proposed sewage disposal systems as designed by a Maine-licensed site evaluator. The code enforcement officer may waive the requirement for plans in the case of minor interior alterations, which in the CEO's opinion do not result in a change in use. The application ~~shall is to~~ include such other information as lawfully may be required by the code enforcement officer to determine conformance with and provide for the enforcement of this title. All plans and correspondence ~~shall~~ are to include the map and lot designation of the property concerned, in the upper right-hand corner.

2. At any time between the initial request for a building/regulated activity permit and the granting of final occupancy certificate the CEO or designated representative ~~shall is to~~ have access to the subject property and structures without obtaining prior permission, written or oral, from the property owner or permittee, except when a temporary occupancy permit ~~shall have~~ has been given to the dwelling owner or permittee.

B. Drainage and Sewage Disposal. Wherever on-site subsurface disposal is contemplated, the approval of building/regulated activity permit applications ~~shall be~~ are subject to evidence of satisfactory subsurface soil conditions for drainage and sewage disposal, and ~~shall be subject to~~ prior obtainment of a subsurface wastewater disposal permit. Such evidence ~~shall must be~~ furnished in compliance with the Maine State Plumbing Code and Chapter 16-32. 8.

~~C. Development Review Threshold.~~

~~1. The planning board is authorized to review development for conformance with standards herein. A developer or his/her authorized agent shall be required to obtain planning board approval in accordance with this title for an developments except the following:~~

~~a. Single and duplex family dwellings;~~

~~b. Expansion of an existing use, where the expanded use will require fewer than six additional parking spaces;~~

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_____ c. _____ The division of land into lots, which division is subject to planning board review as a subdivision, and upon which no buildings will be placed by the developer;

_____ d. _____ Business occupancy change.

_____ 2. _____ The CEO shall ~~must~~ review, inspect, decide upon those developments contained in subsection (C)(1)(a), (b) and (c) of this section, in accordance with the requirements of this title. The CEO and planner shall must review, inspect and decide upon those development changes falling under subsection (C)(1)(d) of this section, in accordance with the requirements of this title.

C. _____ Fee. Except for municipality permits, application for a building/regulated activity permit must be accompanied by a fee which is established by the town council. (See Appendix H, fee schedule.)

D. _____ Approvals Required. The developer or his/her authorized agent shall also must obtain final planning board approval before:

_____ 1. _____ Any contract, or offer for the conveyance of the proposed development (or portion thereof) has been made;

_____ 2. _____ Any subdivision into three or more lots has been recorded in the York County registry of deeds;

_____ 3. _____ A building/regulated activity permit for any structure within the development is issued; or

_____ 4. _____ Work on any improvements (including installation of roads or utilities or land clearing) has begun.

D. _____ Flood Hazard Ordinance. Any building or structure that might be erected in an area subject to periodic flooding must meet all conditions of Chapter 15.12, relating to flood hazard permit and review procedure of this code and the applicable Federal Emergency Management Agency (FEMA) regulation(s). No alteration of the natural contour of the land by grading or filling for any purpose is permitted in an area subject to periodic flooding.

E. Conformance to Standards. All developments shall must be in conformance with the procedures, standards and requirements of this title. All work at a one or two-family dwelling that requires a "building/regulated activity permit" must conform with to the most recently published edition of the following codes that are herein adopted by reference:

1. National Fire Protection Association (NFPA) 101—Life Safety Code;

2. NFPA 70—National Electrical Code;

3. NFPA 211—Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances.

All business ~~use occupancy~~ changes and alterations and additions to commercial properties ~~that do not requiring~~ State Fire Marshal Office review must conform to meet the most recently published edition of NFPA 101—Life Safety Code.

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F. Permit Review Time Constraints. The code enforcement officer ~~shall~~ must approve or deny an application for a building/regulated activity permit within fourteen (14) working days of receiving said application. The town manager may approve or deny an application if no action is taken by the code enforcement officer within fourteen (14) working days.

~~G. Flood Hazard Ordinance. Any building or structure that might be erected in an area subject to periodic flooding shall must meet all conditions of Chapter 15.12, relating to flood hazard permit and review procedure of this code and the applicable Federal Emergency Management Agency (FEMA) regulation(s). No alteration of the natural contour of the land by grading or filling for any purpose shall be permitted in an area subject to periodic flooding.~~

~~H. Fee. Except for municipality permits, application for a building/regulated activity permit shall must be accompanied by a fee which shall be established by the town council. (See Appendix H, fee schedule.) (Ord. 10-96 § 33 (part); land use and dev. code § 5.3)~~

~~16-20.5.0404~~ Certificate of occupancy.

A. Certificate Requirement. It is unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of occupancy ~~shall~~ have been issued therefor by the code enforcement officer, and endorsed to the effect that the proposed use of the building or land conforms with the requirements of this title and all applicable state and federal requirements.

B. Certificate Application Requirement. No building/regulated activity permit ~~shall~~ may be issued until an application has been made for a certificate of occupancy, and the certificate of occupancy ~~shall be~~ is issued in conformity with the provisions of this title upon completion of the work.

C. Temporary Certificate.

1. A temporary certificate of occupancy may be issued by code enforcement officer for a period of six months during construction or alterations for partial occupancy of a building pending its completion, provided that such temporary certificate requires such conditions and safeguards as will protect the safety of the occupants and the public.

2. Commercial establishments ~~shall~~ may not be granted a temporary certificate of occupancy. Occupancy may be granted when construction is complete, all planning board conditions have been met, and all applicable state and local code requirements have been met to the satisfaction of the CEO. Phased construction may be approved by the planning board and certificate of occupancy may be issued by the CEO when phase conditions have been met.

D. Certificate Records. The code enforcement officer ~~shall~~ must maintain a public record of all certificates of occupancy.

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E. Failure to Obtain Certificate. Failure to obtain a certificate of occupancy is a violation of this title.

F. Minor Interior Alterations. An occupancy permit ~~shall is not be~~ required for minor interior alterations during which the building would be considered occupied, and which in the judgment of the code enforcement officer does not constitute a change in use of the building. (~~Ord. 10-96 § 3 (part); land use and dev. code § 5.4, 1994~~)

~~16-20.5.0505~~ Provision for temporary housing.

A. Provision Intentions. The intent of this section is to provide temporary housing for resident owners (exclusive of corporations, trusts and estates) and their immediate families who have lost primary dwellings through fire or natural disaster.

B. Dwellings Uninhabitable by Disaster. In case a fire or natural disaster destroys, or damages, or renders a dwelling or dwelling unit uninhabitable, the following ~~applies~~ apply:

1. The dwelling owner may apply to the CEO for a permit to place a ~~mobile home~~ mobile home on the lot as a temporary residence for the dwelling owner for a period of six months;

2. The applicant must file such an application within six months from the date of the disaster, and agree in writing, that a time limit of six months is acceptable. Proof of financial ability to reconstruct the building must be furnished;

3. If, at the end of six months, substantial work has been completed to the satisfaction of the CEO, the permit may be extended for an additional six months. No further extensions may be granted;

4. A multifamily dwelling may be temporarily replaced by a single ~~mobile home~~ mobile home unit for the use of the dwelling owner only; and

5. Setback requirements may be waived for temporary ~~mobile home~~ mobile homes by the CEO, provided matters of public health and safety are not impaired. (~~Land use and dev. code § 5.5, 1994~~)

~~16-20.5.0606~~ ~~Mobile home~~ Mobile home parks, seasonal trailer parks and campgrounds.

A. Permit Required. No person, firm, corporation, or other legal entity ~~shall may~~ establish or maintain a ~~mobile home~~ mobile home park, seasonal trailer park or campground within the town without a permit issued in conformity with the provisions of this title. It ~~shall be~~ is the park operator's responsibility to obtain the permit.

B. Application. Application for a ~~mobile home~~ mobile home park, seasonal trailer park or campground permit ~~shall must~~ be filed with the code enforcement officer, who ~~shall will~~ present

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said application to the planning board for review as a subdivision, except that permit renewals are not subject to board review. The board ~~shall~~must review the proposal in accordance with the standards contained herein and inform the CEO of its decision. The CEO shall then act on the application as required.

C. Fee and Expiration. Each application for a permit or a renewal thereof ~~shall~~must be accompanied by a fee as established by the town council, for a ~~mobilehome~~mobile home park, seasonal trailer park or campground designed for the accommodation of no more than ten (10) ~~mobilehome~~mobile homes, trailers, or tent sites, and an additional fee as established by the town council, for each additional ~~mobilehome~~mobile home, trailer or tent site, located at the site. (See Appendix K for annual ~~mobilehome~~mobile home park fee schedule.) Permits ~~shall~~ expire on the first day of April next following date of issuance. Before any permit ~~shall be~~is renewed, the premises ~~shall be~~are subject to inspection by the health officer and CEO. If ~~they shall find~~ all requirements of this and other federal, state and local laws have been complied with, ~~they shall certify the same~~ is to be certified and the permit ~~shall be~~ renewed.

D. Permit Display. Permits issued under this section ~~shall~~must be conspicuously posted on the premises at all times and ~~shall be~~are not transferable.

E. Revocation. The CEO is authorized to revoke any permit issued under this section pursuant to the terms of this title, if after due investigation, it is determined the holder thereof has violated any of the provisions of this or any applicable code, law or statute. (~~Land use and dev. code § 5.6, 1994~~)

Chapter 16.246

DECISION APPEALS, AND SPECIAL EXCEPTIONS VARIANCES REQUEST AND OTHER REQUESTS

Sections:

~~16.24.6.010 Purpose.~~

~~16.24.6.020 Planning board decision appeal.~~

~~16.24.6.030 CEO decision appeal.~~

~~16.24.6.040 Types of appeals.~~

~~16.24.6.050 Appeal procedures.~~

~~16.24.6.060 Basis for decision.~~

~~16.24.6.0101~~ Purpose.

This chapter ~~delineates the requirements and processes for filing appeals when a party believes they have a grievance under this title and state statutes;~~ describes the minimum requirements for aggrieved parties to file an appeal under this title and related State statutes, or seeks to seek the granting of a special exception as found in Chapter 16.12; as well as a variances to the standards as provided contained herein. (~~Land use and dev. code § 6.1, 1994~~)

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16.24.6.0202 Planning board ~~Board~~ decision appeal.

A. An aggrieved party with legal standing may appeal a final ~~any~~ decision of the planning board, under these regulations, to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from of the date of the decision action taken by the Planning board was rendered, of said decision pursuant to MRCP Rule 80B. (Land use and dev. code § 6.1.1, 1994)

B. An aggrieved party with legal standing may appeal a final decision of the Board of Appeals to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Board of Appeals was rendered.

16.24.6.0303 Appeal of CEO Code Enforcement Officer ~~D~~decision—

An appeal from a decision of the A code enforcement officer's decision may be appealed taken to the zoning board of appeals as provided in Section 16.24.040 A, and thence, if necessary, to the Superior Court, in accordance with Title 30-A, MRSA Section 2691 and the Maine Rules of Civil Procedure, Rule 80B. (Land use and dev. code § 6.1.2, 1994)

16.24.6.0404 Types of a Appeals/rRequests to Board of Appeals.

For the purposes of this chapter an appeal or request ~~is to~~ means any of the following:

A. Administrative Decision Appeal. When the Board of Appeals reviews an Administrative Decision Appeal of a decision made by the Code Enforcement Officer, the Board of Appeals may receive new evidence and testimony consistent with this Code and the rules of the Board of Appeals. At the conclusion of the hearing and deliberation, the Board of Appeals may uphold, modify, or reverse the decision of the Code Enforcement Officer.

B. Variance Request. A variance may be granted only by the Board of Appeals under the following conditions:

1. for a reduction in dimensional requirements;
2. the use is not prohibited by this Code, and;
3. only if the strict application of the terms of this Code would result in “undue hardship.” The term “undue hardship” means the applicant must demonstrate all of the following:
 - i. The land in question cannot yield a reasonable return unless a variance is granted.
 - ii. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
 - iii. The granting of a variance will not alter the essential character of the locality.
 - iv. The hardship is not the result of action taken by the applicant or a prior owner.
4. notwithstanding Section 16.24.040.B.3, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in, or regularly uses, the dwelling. The Board of Appeals must restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to, or egress from, the dwelling by the person with the disability. The Board of Appeals may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The

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term “structures necessary for access to or egress from the dwelling” includes railing, wall or roof systems necessary for the safety or effectiveness of the structure.

5. a copy of each variance request within the Shoreland Overlay Zone, including the application and all supporting information supplied by the applicant, must be forwarded by the Code Enforcement Officer to the Commissioner of the Maine Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals will be made part of the record to be taken into consideration by the Board of Appeals.

6. the Board of Appeals must limit any variances granted as strictly as possible to ensure conformance with the purposes and provisions of this Code to the greatest extent possible, and in doing so may impose such conditions of approval to a variance as it deems necessary. The party receiving the variance must comply with any conditions imposed.

C. Miscellaneous Variation Request. The Board of Appeals may hear, decide and permit variations in:

1. nonconformance as prescribed in Article III of Chapter 16.28, Nonconformance;
2. standards contained in Article XI of Chapter 16.32, Parking, Loading and Traffic
3. standards contained in Section 16.32.630 Sign Violation and Appeal; or
4. non-subdivision right-of-way widths.

D. Special Exception Use Request. Unless otherwise required by Planning Board review, the Board of Appeals may grant an applicant’s Special Exception Use request only if:

1. consistent with the Development Application and Review Chapter 16.36 provisions of this Code.
2. the land use is not located within the Shoreland Overlay Zone or Resource Protection Overlay Zone, and is specifically authorized by Chapter 16.12. Applications for a special exception use request involving land within the Conservation Zone, and Shoreland Overlay and Resource Protection Overlay Zones must be reviewed by the Planning Board.

~~(Land use and dev. code § 6.1.3, 1994)~~

16.24.6.0505 Board of Appeals aAppeal/rRequest filing procedures.

~~A. Initiative Procedures.~~

~~1. Variance or miscellaneous appeals and requests for special exceptions must be made by the property owner or duly authorized agent.~~

~~2. In all cases, a person aggrieved by a decision of the code enforcement officer must commence appeal within thirty (30) days of the date of notification to the applicant of the decision made by the CEO. Notwithstanding the above time limit, a person aggrieved by a decision of the code enforcement officer to issue a building/related activity permit must commence appeal within thirty (30) days of the date that the decision is publicly posted at the Kittery municipal offices. The appeal must be filed with the code enforcement officer or designee on forms approved by the zoning board of appeals, and the appellant must specifically set forth on such form(s) the grounds for such appeal (i.e., claimed interpretation of this title and reasons why the appeal should be~~

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granted). Incomplete applications for appeals/requests must not be accepted. The code enforcement officer or designee shall must note on the appeal the date of filing.

3. ~~Layout or plot plans shall be submitted with requests for special exceptions and all appeals. Plans shall are to be drawn to scale, showing the location and dimensions of the lot, existing and proposed buildings and other structures, and, parking areas indicating individual spaces, traffic access and circulation drives, open spaces, landscaping, lighting and such other information as may be necessary to provide for the administration of this title.~~

4. ~~At any time between the initial CEO acceptance of an appeal/request and final approval or denial of the appeal/request by the ZBABOA, ZBABOA members or associate members shall are to have access to the subject property not including building interiors, without obtaining prior permission, written or oral, from the property owner or applicant.~~

A. Making an Appeal/Request. An administrative decision appeal, variance request, or miscellaneous variation request may be submitted to the Board of Appeals. An administrative appeal must be submitted within thirty (30) days of the date of the official, written decision being appealed. Other requests may be filed at will.

1. The appeal or request must be filed with the Code Enforcement Officer on forms approved by the Board of Appeals and the party must specifically state on such forms the grounds for such appeal or request, including claimed discrepancies in the interpretation of this Title, and reasons why the appeal or request should be granted. Incomplete applications for appeals and/or requests will not be accepted. Upon receipt of an appeal or request application, the Code Enforcement Office must stamp a receipt date on the appeal or required form. Said date constitutes the filing date of the appeal or request. Applications for appeals or requests must include the following:
a. The appeal or request must be made by the property owner, an aggrieved party or their respective duly authorized agent.

b. The appeal or request must include a concise written statement indicating what relief is requested and why the appeal or request should be granted.

c. Where the appeal or request is made from a decision by the Code Enforcement Officer, the applicant must submit plans, maps and related documentation to the Code Enforcement Office for distribution to the Board of Appeals members at least two weeks prior to the meeting of the Board of Appeals. A minimum of ten (10) sets of all submissions is required.

d. The Board of Appeals must hold a public hearing on an appeal or request within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the applicant and BOA.

2. At any time between the initial acceptance by the Code Enforcement officer of an appeal/request and final approval or denial of the appeal/request by the Board of Appeals, the owner or applicant must allow members of the Board of Appeals full access to the subject property, not including building interiors, without obtaining prior permission, written or oral.

B. Hearing and Notice. Before taking any action on any appeal/ request, the zoning board of appeals Board of Appeals shall must hold a public hearing. In all such hearings, the code enforcement officer or designee shall notify and provide the following notifications:

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1. by mail at least seven (7) and not more than fourteen (14) days prior to the scheduled hearing date, ~~the to owners of~~ abutting property owners for which that an appeal/ request is made, of the nature of the appeal/ request and of the time and place of the public hearing thereon; and
2. ~~No~~ notice of all such actions ~~shall~~must also be published in a newspaper of general circulation in the Town at least seven days prior to the public hearing.

C. Owner Identity. For the purposes of this section, the owners of property ~~shall be~~ are considered to be the parties listed by the ~~Tax a~~ Assessor for the town as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing ~~shall~~ will not necessitate another hearing or invalidate any action by the ~~zoning~~ board of appeals.

D. Notification and Timing Constraints. Following the filing of an appeal/request, ~~the code enforcement officer or designee shall notify forthwith the zoning board of appeals, conservation commission and planning board, and the appeal/request shall be in order for hearing at a subsequent meeting of the zoning board of appeals following by at least ten (10) days mailing of notices but within thirty (30) days of the appeal/request. it is the duty of the Code Enforcement Officer to notify the Board of Appeals, Planning Board and Conservation Commission of the filing. The appeal or request must be complete for hearing at a subsequent meeting of the Board of Appeals occurring no less than ten (10) days after the mailing of notices but within thirty (30) days of the appeal.~~

E. ZBA Decisions of the Board of Appeals. ~~Written notice of the decision of the zoning board of appeals shall be sent to the appellant/requester, the code enforcement officer, conservation commission, planning board and municipal officers within thirty (30) days of the date of the hearing of the appeal or request and within seven days of the decision. The vote of each member shall be part of the record. The written notice of the decision of the zoning board of appeals shall include the statement of findings. In the case of denials, the statement of findings shall include the reason for the denial.~~

1. The person filing the appeal or request has the burden of proof.

2. A minimum of four (4) like votes is required for a decision by the Board of Appeals, except on procedural matters.

3. The Board of Appeals must decide the appeal or request within thirty (30) days after the close of the hearing, and issue a written decision.

4. Written notice of the decision of the Board of Appeals must be sent to the appellant or petitioner, the Code Enforcement Officer, Conservation Commission, Planning Board and municipal department heads within seven (7) days of the decision. The vote of each member must be part of the record. The written notice of the decision of the Board of Appeals must include the statement of findings. In the case of denials, the statement of findings must include the reason for the denial.

F. Order of Review.

1. Where a special exception request or appeal is necessary as an integral part of a development review process, ~~zoning~~ board of appeals action ~~is shall be~~ encouraged prior to planning board review where required. The findings of the ~~zoning~~ board of appeals as well as any file material must ~~shall~~ be made available to the planning board.

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2. The planning board may give approval to the preliminary plan as an overall development prior to the applicant filing an appeal/request. ~~If a special exception to zoning is required and the zoning board of appeals has denied a special exception, then the planning board shall cease deliberations until such time the conditions denying the special exception have been rectified. The findings of the planning board as well as any file material shall be made available to the zoning board of appeals.~~

G. Special Exception Referral.

1. Before granting any special exceptions, the zoning board of appeals may refer the application to the planning board and/or port authority, for a report prior to any subsequent ZBOA review of the application.

2. The planning board and/or port authority report ~~must~~ shall be considered informational in character, and may take into consideration the effect of the proposal upon the character of the neighborhood or any other pertinent data ~~in respect of the town's comprehensive plans.~~

3. The planning board and/or port authority report ~~must~~ shall be submitted to the ZBOA for its consideration prior to the officially scheduled time of public hearing on the request.

H. Venue and Representation. At any hearing, a party may appear by agent or attorney. Hearings may be continued to other times/places.

I. Code Enforcement Officer Attendance. The CEO or designated assistant ~~shall~~ must attend all hearings and may present to the ZBOA all plans, photographs, or other material the CEO deems appropriate for an understanding of the appeal/request.

J. Appellant's Case First. The appellant's case ~~must~~ shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the chairperson.

K. Expiration of Approval.

1. Approvals granted under the provisions of this chapter ~~shall~~ will expire if work or change in use involved is not commenced within six months of the date on which approval is granted, or if the work or change in use is not substantially completed within one year of the date on which such approval is granted, unless as otherwise provided for in the approval decision.

2. When circumstances are such that a plan with an approved appeal or special exception is required to be reviewed by another agency (e.g., DEP, ~~p~~Planning ~~b~~Board, KPA), any period the plan is at that agency, from time of submission to time of decision inclusive, verified by recorded documentation, ~~shall~~ will not be counted as part of the cumulative time periods described in the section above.

3. Should a successful appellant not be able to commence and/or substantially complete the work or change in use before the time constraints contained in K.1 above, the appellant may reappear before the Board before the original approval expires and request an extension of the approval.

~~L.~~ Second Appeals/Requests. If the zoning board of appeals ~~shall~~ denies an appeal/request, a second appeal/request of a similar nature ~~may~~ shall not be brought before the ZBOA within one year from the date of original denial, unless the appellant ~~shall~~ submits new evidence and the

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ZBOA, by formal action, decides the evidence is significant and warrants a new hearing, or unless the ZBOA finds in its sole and exclusive judgment that an error or mistake of law or misunderstanding of facts ~~shall have~~ has been made.

M. Reconsideration. In accordance with 30-A M.R.S., §2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision.

~~M.~~ N. Fees. The appellant ~~must~~ shall pay a fee for filing an appeal or special exception request in an amount as set by the town council.

~~(See Appendix J fee schedule.) (Ord. 3a-07 (part); Ord. 7-06; Ord. 9-96 § 4; land use and dev. code § 6-2, 1994)~~

1. A request for the Board of Appeals to reconsider a decision must be filed with the Code Enforcement Officer within ten (10) days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision requires a positive vote of the majority of the board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, the Town Planner, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

2. Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

~~16.24.6.0606~~ 16.24.6.0606 Basis for decision for Miscellaneous and Special Exception Requests.

A. Conditions. In hearing appeals/requests under this section, the zoning board of appeals must make findings of fact per Development Application and Review Chapter 16.36.??? provisions of this Code shall determine:

~~1. That the proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use districts;~~

~~2. That the use will not prevent the orderly and reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use district;~~

~~3. That the safety, the health, and the welfare of the town will not be adversely affected by the proposed use and its location; and~~

~~4. That the use will be in harmony with and promote the general purposes and intent of this title.~~

B. Factors for Consideration. In making such determination, the zoning board of appeals shall also give consideration, among other things, to:

~~1. The character of the existing and probable development of uses in the district and the peculiar suitability of such district for the location of any of such uses;~~

~~2. The conservation of property values and the encouragement of the most appropriate uses of land;~~

~~3. The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;~~

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~~4. The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use);~~
~~5. Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;~~
~~6. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;~~
~~7. Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the town or by other competent governmental agency;~~
~~8. The necessity for paved off-street parking;~~
~~9. Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used therefor, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of person upon such plot;~~
~~10. Whether the use, or the structures to be used therefor, will cause an overcrowding of land or undue concentration of population; or, unsightly storage of equipment, vehicles, or other materials;~~
~~11. Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;~~
~~12. Whether the proposed use will be adequately screened and buffered from contiguous properties;~~
~~13. The assurance of adequate landscaping, grading, and provision for natural drainage;~~
~~14. Whether the proposed use will provide for adequate pedestrian circulation;~~
~~15. Whether the proposed use anticipates and eliminates potential nuisances created by its location;~~
~~16. The satisfactory compliance with all applicable performance standard criteria contained in Chapter 16.32.~~
C. Additional Special Exception Conditions. Special exception approvals may be subject to additional conditions as determined by the ZBA, including the following:
~~1. Front, side or rear yards in excess of minimum requirements;~~
~~2. Modifications of the exterior features of buildings or other structures;~~
~~3. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements;~~
~~4. Regulation of design of access drives, sidewalks and other traffic features;~~
~~5. Off-street parking and loading spaces in excess of the minimum requirements; or~~
~~6. Restrictions on hours of operation.~~
B.D. Outstanding Violations. No variance, ~~or~~ special exception, or miscellaneous variation request may be granted for premises on which outstanding violations of this ~~title~~Code exist, unless the effect of such variance, ~~or~~ special exception, or miscellaneous variation would remedy all such violations. (Land use and dev. code § 6.3, 1994)

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Chapter 16.287_____

GENERAL DEVELOPMENT REQUIREMENTS

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~~16.28.7.010 In general.~~

Article II. Conformity

~~16.28.7.020 Conformity required.~~

~~16.28.7.030 Minimums and uniformity.~~

~~16.28.7.040 Land within street lines.~~

~~16.28.7.050 Yard, parking or loading space.~~

~~16.28.7.060 Zoning boundary line extension.~~

~~16.28.7.070 Single noncontiguous lots.~~

~~16.28.7.080 Averaging building setbacks.~~

~~16.28.7.090 Two or more contiguous nonconforming lots.~~

Article III. Nonconformance

~~16.28.7.100 Intent of article.~~

~~16.28.7.110 Nonconforming uses.~~

~~16.28.7.120 Expansion of nonconforming use.~~

~~16.28.7.130 Nonconforming buildings.~~

~~16.28.7.140 Reconstruction of nonconforming buildings.~~

~~16.28.7.150 Nonconforming parking or loading space.~~

~~16.28.7.160 Nonconforming steps.~~

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Article IV. Waivers

~~16.28.7.180 Waiver authorized.~~

~~16.28.7.190 Objectives secured.~~

Article V. Other Requirements

~~16.28.7.200 Burden of proof.~~

~~16.28.7.210 Comprehensive plan.~~

~~16.28.7.220 Site inspection.~~

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~~16.28.7.240 Applicant attendance.~~

~~16.28.7.250 Plans below subdivision thresholds.~~

Article VI. Site Review Thresholds

~~16.28.7.260 In general.~~

Article VII. Subdivision Review Thresholds

~~16.28.7.270 Land and buildings.~~

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7011
7012 ~~Article VIII. Municipal Impact~~
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7014 ~~16.28.7.300 —Municipal construction and maintenance items.~~
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7017 ~~Article IX. Recreation Setaside~~
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7021
7022 ~~Article X. Development Exaction~~
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7024 ~~16.28.7.360 —Impact fees.~~
7025
7026 ~~Article XI. Land Not Suitable for Development~~
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7029 ~~Article XII. Conservation of Kittery Wetlands~~
7030 ~~16.28.7.380 —Purpose and intent.~~
7031 ~~16.28.7.390 —Wetlands and boundaries.~~
7032 ~~16.28.7.400 —Regulated activities.~~
7033 ~~16.28.7.410 —Permitted activities.~~
7034 ~~16.28.7.420 —Prohibited uses within regulated wetlands.~~
7035 ~~16.28.7.430 —Uses permitted with an approved wetlands permit application.~~
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7044 ~~Article XIII. Rules Governing Special Situations for Setbacks~~
7045 ~~16.28.7.510 —Setbacks extending beyond publicly accepted streets.~~
7046 ~~16.28.7.520 —Newly created wetlands and water bodies.~~
7047 ~~16.28.7.530 —Setbacks from altered wetlands or water bodies.~~
7048 ~~16.28.7.540 —Setbacks for utility poles.~~
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Article I. Purpose

~~16.28.7.0101~~ **16.28.7.0101** In ~~g~~General.

This chapter outlines requirements for conformity; discusses nonconformance and waivers; and defines various development review thresholds and requirements to further the safe and orderly development of the town. (~~Land use and dev. code § 7.1, 1994~~)

Article II. Conformity

~~16.28.7.0202~~ **16.28.7.0202** **Conformity required.**

No building or structure or land shall be erected, altered, enlarged, rebuilt, moved or used, and no premises shall be used unless in conformity with the provision of this title, except those existing which by the provisions of this chapter become legally nonconforming. (~~Land use and dev. code § 7.2.1, 1994~~) may hereafter be used or occupied, and no building or structure or part thereof may hereafter be erected, constructed, expanded, moved, or altered and no new lot may be created except in conformity with all of the regulations herein specified for the zone where it is located, unless such structure or use exists as a legally nonconforming use, or a variance is granted. See Section 16.32.340 for specific requirements related to septic waste disposal systems.

~~16.28.7.0303~~ **16.28.7.0303** Minimums and uniformity.

The regulations specified by this title for each class of district ~~shall be~~are minimum requirements and ~~shall~~ apply uniformly to each class or kind of structure or land. (~~Land use and dev. code § 7.2.2, 1994~~)

~~16.28.7.0404~~ **16.28.7.0404** Land within street lines.

Land within the lines of a street on which a lot abuts ~~shall is~~not be considered as part of such lot for the purposes of meeting the area/frontage requirements of Chapter 16.12, notwithstanding the fact that the fee to such land may be in the owner of such lot. (~~Land use and dev. code § 7.2.3, 1994~~)

~~16.28.7.0505~~ **16.28.7.0505** Yard, parking or loading space.

No part of a yard, or other space or off-street parking or loading space about or in connection with any building, and required for the purpose of complying with this title, ~~shall~~may be included as part of a yard, open space or off-street parking or loading space similarly required for any other building, except as authorized in Section 16.32.8.560G. (~~Land use and dev. code § 7.2.4, 1994~~)

~~16.28.7.0606~~ **16.28.7.0606** Zoning boundary line extension.

Where a zoning district boundary line divides a lot, the regulations applicable to either zone of such lot may extend not more than fifty (50) feet into the portion in the other zone(s), except when a less restrictive portion abuts the resource protection zone.

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A. Before granting any such extension, the planning board ~~shall~~ must determine that the proposed use of the extended portion:

1. Will not prevent the orderly and reasonable use of properties in the adjacent zone;
2. ~~Shall be~~ is in harmony with the character of the adjacent zone;
3. Will not adversely affect the property values of adjacent zone's immediate neighborhoods;
4. Will not create any traffic hazards or undue traffic congestion on streets in the adjacent zone;
5. Will not give off obnoxious gases, odors, smoke or soot;
6. Will not cause disturbing emission of electrical discharges, dust, light, vibration or noise; and
7. Will be adequately screened and buffered from the adjacent zone.

B. The planning board may require a study to be performed, or commissioned, by the applicant to insure compliance with the above requirements. (~~Land use and dev. code § 7.2.5, 1994~~)

~~16-28.7.0707~~ **16-28.0707 Lots:** Single noncontiguous lots.

In any district, notwithstanding limitations imposed by other sections of this title, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular district. These provisions ~~shall~~ apply even though such lots fail to meet the minimum requirements for area or width, or both, which are applicable in the district, provided that yard dimensions and other requirements, not involving area or width, or both, of the lot ~~shall~~ conform to the regulation for the district in which such lot is located. Relaxation of yard and other requirements not involving area or width ~~shall may~~ be obtained only through miscellaneous appeal to the zoning board of appeals. (~~Land use and dev. code § 7.2.6, 1994~~)

~~16-28.7.0808~~ **16-28.0808 Setbacks:** Averaging building setbacks.

Building setback from the street line need not be greater than the average of the setback distances of the buildings on the lots next thereto on either side. (~~Land use and dev. code § 7.2.7, 1994~~)

~~16-28.090. Two or more contiguous nonconforming lots.~~

~~If two or more contiguous lots, nonconforming as to size, were in the same ownership on July 13, 1977 and have remained in the same ownership, and a combination of such lots or a portion~~

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thereof, shall constitute a lot of conforming size, such combination shall be deemed to be a single conforming lot for the purposes of this title and buildings and structures may be erected thereon, provided however, that they meet the requirements of the zone in which they are located, and only if the land and buildings are otherwise in full conformity with such provisions. If a combination of such lots results in a nonconforming lot, Section 16.28.070 shall apply. This subsection shall not apply to any Planning Board approved subdivision for which an approved plan was recorded in the York County Registry of Deeds on, or before, July 13, 1977. (Land use and dev. code § 7.2.8, 1994)

Article III. Nonconformance

~~16.28.100 Intent of article.~~

~~The intent of this article is to regulate nonconforming lots, uses and buildings. This title intends that non-conforming vacant lots of record may be developed, maintained or repaired; and nonconforming uses may continue, or be changed to an equal or more appropriate nonconforming use or to a conforming use. When the non-conforming use ceases for any reason for a period of one year or more, the intent of these regulations is not to allow it to be reestablished. (Land use and dev. code § 7.3, 1994)~~

16.7.100 Purpose.

The purpose of this Code is to promote land use conformities. Except as otherwise provided in this Article, a non-conforming condition must not be permitted to become more non-conforming. The purpose is to regulate nonconforming lots, uses and buildings. Nonconforming vacant lots of record may be developed, maintained or repaired. Nonconforming uses may continue, may be changed to an equal or more appropriate nonconforming use, or be changed to a conforming use. When the nonconforming use ceases for any reason, for a period of one (1) year or more, the purpose of this Code is not to allow it to be re-established.

A. General.

1. Transfer of Ownership. Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Code.

2. Repair and Maintenance. This Code allows the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure that is not otherwise permitted by this Code, and such other changes in a nonconforming use or structure as Federal, State, or local building and safety codes may require.

B. Types of nonconformance

1. Continuance. The use of land or building, lawful at the time such building or use was created, may continue although such building or use does not meet the provisions of this Code.

2. Expansion. Expansions of nonconforming use are prohibited, except nonconforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 16.28.110.A.1.

3. Enlargement of Nonconforming Use of Land. A nonconforming use of land may not be enlarged to cover more land than was employed by that use when it became nonconforming.

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except that nonconforming residential uses located within the Resource Protection Overlay, or Shoreland Overlay Zone with Board of Appeals approval, may be expanded by thirty (30) percent of the structure, in floor area or volume, during the lifetime of the structure if the applicant can prove the proposal is consistent with the review standards in Section 16.32.1600.

4. Enlargement of Residential Use in Commercial Districts. Notwithstanding the above limitations on enlargements of nonconforming use, a nonconforming residential use located within the Commercial Districts may be enlarged in conformity with the dimensional requirements contained in this Code. If the proposed enlargement of a nonconforming residential use in a commercial district cannot meet the dimensional requirements of this Code, then the application must be submitted to the Board of Appeals for review as a Miscellaneous Appeal. In reviewing all such applications for enlargement, the Board of Appeals must use the criteria established herein, and then may grant permission for such proposed changes.

5. Resumption Prohibited. A lot, building or structure, in, or on, which, a non-conforming use is discontinued for a period exceeding one (1) year, or which is superseded by a conforming use, loses its status as a nonconforming use. The uses of the land or building must thereafter meet the provisions of this Code. This provision does not apply to the resumption of a use of a residential structure where it can be demonstrated that the structure has been used or maintained for residential purposes during the preceding five (5) year period.

~~16.28.110 – Nonconforming uses.~~

~~A. Continuance. The use of land or building, lawful at the time such building or use was created, may continue although such building or use does not conform to the provisions of this title.~~

~~B. Resumption. Whenever a nonconforming use of a building is superseded by permitted use of a building, or building and land in combination, such building or combination of land and building shall thereafter conform to the provisions of this title and the nonconforming use may not thereafter be resumed.~~

~~C. Discontinuance. A nonconforming use which is discontinued for a period of one year may not be resumed. The uses of the land or building shall thereafter conform to the provisions of this title.~~

~~D. Change of Use. Outside the areas regulated by shoreland zoning, an existing nonconforming use may be changed to another nonconforming use with approval of the Planning Board provided that the proposed use is no more nonconforming. Within areas regulated by shoreland zoning, an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board provided the proposed use has no greater adverse impact on any water body or wetland, or on the subject and adjacent properties and resources, including water dependent uses in the CFMA district, than the former use, as determined by the Planning Board. Within the area regulated by shoreland zoning the determination of no greater adverse impact shall be made according to criteria listed in 16.32.490(O)(4).~~

~~E. Enlargement. A nonconforming use of land shall not be enlarged to cover more land than was utilized by that use when it became nonconforming, except that nonconforming residential uses located within the resource protection district, with approval of the Planning Board, may be expanded by to thirty (30) per-cent of the structure, in floor area or volume, during the lifetime of the structure if the applicant can prove that the proposal is consistent with the review standards in Section 16.32.490(O)(4).~~

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F. ~~Enlargement of Residential Uses in Commercial Districts. Notwithstanding the above limitations on enlargements of nonconforming uses, a nonconforming residential use located within the commercial district may be enlarged in conformity with the dimensional requirements contained in this title. If the proposed enlargement of a nonconforming residential use in a commercial district cannot meet the dimensional requirements of this title, then the Planning Board shall review all such applications and may grant permission for such proposed changes. In reviewing all such applications for enlargement, the Planning Board shall use the criteria established herein. (Ord. 6-94 (part); land use and dev. code § 7.3.1, 1994)~~

16.7.110 Nonconforming structures in Shoreland and Resource Protection Zones.

A. Expansions. A non-conforming structure may be added to, or expanded, after obtaining a permit from the Code Enforcement Officer. Such addition or expansion must not increase the nonconformity of the structure and must be in accordance with subparagraphs 1 and 2 below.

1. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by more than 30%, during the lifetime of the structure.

If a replacement structure conforms with the requirements of Section 16.28.140.A. and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989 had been expanded by 30% in floor area or volume since that date.

2. Whenever a new, enlarged or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.28.110.B - Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.28.110.A.1, above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.

B. Relocation. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all dimensional requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case may the relocation of a structure be permitted that causes the structure to be more nonconforming. See Section 16.32.340.G. for other specific requirements related to septic waste disposal systems.

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In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board must consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure, the Planning Board may require replanting of native vegetation to compensate for the destroyed vegetation, and may restrict mowing and pruning of the replanted native vegetation to encourage a more natural state of growth. Replanting will be required as follows:

1. Trees removed to relocate a structure must be replanted with at least one native tree, six (6) feet in height, for every tree removed. If more than five trees are planted, no one species of tree can be used to make up more than 50% of the number of trees planted. Replaced trees must be planted no farther from the water or wetland than the trees that were removed.

2. Other woody and herbaceous vegetation, and ground cover that is removed or destroyed to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

3. Prior to the commencement of onsite construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. Removal of the stakes, caution tape, silt fences, and such other materials used during construction, is required at the completion of the onsite work, but not before permission to remove such has been given in writing by the Code Enforcement Officer.

4. Where feasible, when a structure is relocated on a parcel, the original location of the structure must be replanted with vegetation consisting of grasses, shrubs, trees or a combination thereof.

~~16.28.7.120~~ Expansion of nonconforming use.

Expansion of a nonconforming use to any building or land area other than that occupied as such when created, except uses in conformity with sub-sections 16.28.100.B.5. and 16.28.170 is not permitted.

~~A. A nonconforming use shall not be extended within a building or to any portion of the floor area that was not occupied by such use on July 13, 1977.~~

~~B. A nonconforming use shall not be extended to any building or land area other than the one(s) occupied by such use on July 13, 1977, except in conformity with subsection E or F of Section 16.28.110.~~

~~C. In the case of any legally existing use, created as a result of legally approved development between July 13, 1977 and April 26, 1990, which becomes nonconforming as a direct result of implementation of this title shall be afforded the same protections as contained herein as for those protected (grandfathered) uses in existence prior to July 13, 1977. (Ord. 6-94 (part): land use and dev. code § 7.3.2, 1994)~~

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16.28.7.130 Nonconforming buildings. Repair and enlargement of nonconforming structures.

A. ~~Repair/Enlargement.~~ A nonconforming building may be repaired or maintained and may be enlarged in conformity with the dimensional requirements, such as setback, height, etc., as contained in this ~~title~~Code. If the proposed enlargement of a nonconforming building cannot meet the dimensional requirements of this ~~title~~Code the ~~z~~Zoning ~~b~~Board of ~~a~~Appeals shall will review all applications and may grant permission for such proposed changes. In re-viewing all such applications for enlargement or repair ~~changes in use~~, the ~~z~~Zoning ~~b~~Board of ~~a~~Appeals shall will use the criteria established herein.

B. ~~If the proposed enlargement of a building is a vertical enlargement, follows the existing building line and will not result in setbacks less than those already existing, the approval of the Planning Board is not required, unless located in the shoreland zone. This subsection shall not apply to any proposed vertical expansion of a patio, deck or accessory structure permitted to be closer to a water body or than a principal structure in accordance with 16.32.490(N)(2), in the Planning Board, and in accordance with Table for Chapter 16.12, set out at the end of Chapter 16.12, in areas outside the Planning Board. If the proposed enlargement of a structure is (1) a vertical enlargement that follows the existing building footprint and (2) will not result in setbacks less than those already existing, approval of the Board of Appeals is not required. This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory structure permitted to be closer to a water body or than a principal structure in accordance with 16.28.100.B.1 and 5, and in accordance with Table 16.34 – Minimum Setbacks from Wetlands and Water Bodies.~~

C. ~~Except in the village residence district~~ Residential- Village Zone, minimum setbacks of detached residential storage sheds that are less than one hundred and one (101) square feet (maximum size one hundred (100) square feet) and detached one-story residential garages (maximum size five hundred seventy-six (576) square feet) that are less than five hundred and seventy-seven (577) square feet, may be one-half the minimum rear and side yard setbacks required of the principal building on providing the lots are legally made nonconforming. ~~(Land use and dev. code § 7.3.6, 1994)~~

D. Nonconforming Structures within Areas Regulated by Shoreland Zoning.

1. ~~Expansions.~~ A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not extend or increase the nonconformity of the structure any closer than the existing closest distance of each of the shoreland structures' building facades to the normal high water line of a water body, tributary stream or upland edge of a wetland it fronts, subject to the following limitations:

a. ~~After January 1, 1989, if any portion of a structure is less than the required setback from the normal high water line of a water body or upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume, by thirty (30) percent or more, during the lifetime of the structure.~~

b. ~~Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided: that the structure and new foundation are placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in subsection (D)(2) of this section,~~

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Relocation; that the completed foundation does not extend beyond the exterior dimensions of the structure; and that the foundation does not cause the structure to be elevated by more than three additional feet.

c. No structure within the area regulated by shoreland zoning which is less than the required setback from the normal high-water line of a water body, tributary stream or upland edge of a wetland shall be expanded any closer than the existing closest distance of each of the shoreland structures' building facades to the normal high-water line of a water body, tributary stream or upland edge of a wetland it fronts. In instances where there is more than one shoreland setback requirement, such as structures on a peninsula or point, or multiple wet-lands, each building facade must maintain its own setback requirement to the normal high-water line of a water body, tributary stream or upland edge of a wetland it fronts. Expansions made within the required setback from the normal high-water line of a water body, tributary stream or upland edge of a wetland shall not increase the existing footprint within the setback except with Planning Board approval unless the expansion is for patio or deck area, cumulatively no larger than five hundred (500) square feet in size, that conforms with a seventy-five (75) foot setback, horizontal distance, from the water body, tributary stream or wetland. (See Section 16.32.490(N)(2).)

2. Relocation. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the state of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming. In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

3. Change of Use of a Nonconforming Structure. The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses. (Ord. 11-99; Ord. 2-97 (part); land use and dev. code § 7.3.3, 1994)

16.7.140 Structures: Reconstruction of nonconforming.

Any legally nonconforming building which is hereafter damaged or destroyed by fire or any cause other than the willful act of the owner or his or her agent, may be restored or reconstructed in conformity with the dimensions of the original building within twelve (12) months of the date of said damage or destruction, provided, however, that such restoration or reconstruction shall not enlarge

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~~the size or make it more nonconforming than the prior nonconforming building. Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed. (Ord. 12-99; land use and dev. code § 7.3.4, 1994)~~

A. If the reconstructed or replacement structure is less than the required setback it must not be any larger than the original structure, except as allowed pursuant to Section 16.28.110.A. above, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location. Nothing in this section prevents the Code Enforcement Officer from issuing a demolition permit for the remains of any building that has been damaged or destroyed.

B. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is hereafter damaged or destroyed by fire or any cause, through no fault or action by the owner, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer within twelve (12) months of the established date of damage or destruction.

~~16.28.7.150~~ Nonconforming parking or loading space.

A building and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this Ordinance Code for both the original and addition or enlargement of the building or use. ~~(Land use and dev. code § 7.3.5, 1994)~~

~~16.28.7.160~~ Nonconforming steps.

The addition of steps and landings, exterior to the building from the first floor to the ground level shall does not constitute expansion. Such steps are not to be considered part of the structure for such determination. Step landings may not exceed three feet by three feet (3'x3') clear

~~16.28.7.170~~ Nonconforming lots of record.

~~A. Vacant Lots. Nonconforming Lots:~~ A nonconforming lot of record ~~as of the effective date of this Code or amendment thereto,~~ may be built upon without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership and all provisions of this title except lot size and frontage can be met. Relaxation of yard or other requirements not involving area or frontage shall may be obtained only by miscellaneous appeal variation request to the zoning bBoard of aAppeals.

If two or more principal uses or structures existed on a single lot of record on the effective date of this Code, each may be sold on a separate lot provided the Town Planner and Code Enforcement Officer determine that each resulting lot is as conforming as possible to the dimensional requirements of this Code.

B. Contiguous Built-Upon Lots. If two or more contiguous built-upon lots or parcels are in single owner-ship of record at the time of adoption or amendment of this title and if all or part of the lots

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do not meet the dimensional requirements of this title, and if a principal use exists on each lot, the nonconforming lots may be conveyed separately or together, providing ~~all state law and local ordinance requirements~~ the State Minimum Lot Size Law (12 M.R.S., §4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with. (~~Land use and dev. code § 7.3.7, 1994~~)

C. Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels were in single or joint ownership of record on or before July 13, 1977 and have remained in the same ownership, and if a combination of such lots or a portion thereof constitutes a lot of conforming size, such combination is recognized to be a single conforming lot for the purposes of this Code. If any of these lots do not individually meet the dimensional requirements of this Code or subsequent amendments, and if one or more of the lots is vacant or contains no principal structure, the lots must be combined to the extent necessary to meet the dimensional requirements of the zoning district. This subsection does not apply:

1. to any Planning Board approved subdivision for which an approved plan was recorded in the York County Registry of Deeds on, or before July 13, 1977.

2. if two or more contiguous lots are under the same ownership, at least one of which is nonconforming, and were recorded in the York County Registry of Deeds on or before July 13, 1977.

3. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this Code Section 16.34.340.G – Septic Waste Disposal and the State of Maine Subsurface Wastewater Disposal Rules;

4. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

5. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.28.180.C.1 (above) are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

16.7.175 Change of use of a nonconforming structure.

The reviewing authority per sub-sections A, B, and C, may require evaluations be prepared by a person certified and/or qualified to perform the required evaluation. It is the burden and responsibility of the applicant to bear the costs for such evaluations. In the event there are existing official maps, data and/or reports for general use, the applicant is encouraged to submit copies of these documents to the reviewing authority. In determining that no greater adverse impact will occur, the applicant may be required to submit an evaluation in writing regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

A. Administratively. The Town Planner and the Code Enforcement Officer may approve the change of use of a nonconforming structure where it can be deemed the proposed use is a conforming use and the proposed use does not impact a water body, tributary stream, or wetland. See Section 16.16.020.E. and Section 16.16.030.E.

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B. By Board of Appeals. Outside the areas regulated by Shoreland Overlay Zone and Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with approval of the Board of Appeals provided the proposed use is not more nonconforming.

C. By Planning Board. Within areas regulated by Shoreland Overlay Zone and Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board provided the proposed use has no greater adverse impact on any water body or wetland, or on the subject and adjacent properties and resources, including water dependent uses in the Commercial Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning Board. Within the area regulated by Shoreland Overlay Zone and Resource Protection Overlay Zone, the determination of no greater adverse impact will be made according to section 16.36.

Article IV. Waivers

16.287.190 Objectives met.Secured

In granting modifications or waivers, the Planning Board ~~shall~~ must require such conditions as will, in its judgment, ~~secure~~ substantially meet the objectives of the requirements so waived or modified. (~~Land use and dev. code § 7.4.2, 1994~~)

Article V. Other Requirements

16.287.200 Burden of proof.

In all instances, the burden of proof ~~shall be~~ is upon the applicant proposing the development. (~~Land use and dev. code § 7.5.1, 1994~~)

16.287.210 Comprehensive plan.

Any proposed development, or use, ~~shall~~must be in harmony with the guidance contained in the Kittery comprehensive plans if adopted into the provisions of this Code. (~~Land use and dev. code § 7.5.2, 1994~~)

16.287.220 Site inspection.

A. ~~So In order for the Planning b~~Board may ~~to~~ be fully informed about the site and in a knowledgeable position to prescribe contour intervals to be employed on topographic maps and grading plans for the development, the applicant developer shall must arrange a joint inspection of the site with the Planning b~~Board~~, or a committee, or member, or individual appointed by the chairperson to act as the Planning b~~Board's~~ representative for such inspection or other town committee as appropriate.

B. At any time between the initial planner acceptance of an application and final approval or denial of the plan by the board, the planner or board members ~~or associate members shall~~must have access to the subject property not including building interiors, without obtaining prior permission, written or oral, from the property owner or applicant. (~~Land use and dev. code § 7.5.3, 1994~~)

TITLE 16 – COUNCIL PUBLIC HEARING 02/22/10 – w/Shoreland – Part 1

NOTE: Internal Chapter, Article, and Section references have not been revised

16.28.230 Safe use.

—The land/water area to be developed ~~shall~~must be of such character that it can be used without danger to health, or peril from fire, flood, soil failure or other hazard. (~~Land use and dev. code § 7.5.4, 1994~~)

16.28.240 ————— Applicant attendance.

~~The developer, or duly authorized representative shall attend all board meetings for which the developer's application has been placed on the agenda. Relief may be given from this requirement by the board chairperson. (Land use and dev. code § 7.5.5, 1994)~~

16.28.250 ————— Plans below subdivision thresholds.

~~—All applications for plan approval for properties which come under this title but cannot be classified as a major or minor subdivision shall be accompanied by a fee as determined by the town council. (Land use and dev. code § 7.5.6, 1994)~~